# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 2[illegible]1

HARRIET C. BOOTH, PLAINTIFF IN ERROR,

vs.

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED AUGUST 3, 1905.

(24,211)

(23,812)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1913.

## No. 661.

HARRY C. BOOTH, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF INDIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.



JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 9, 1913.

1 STATE OF INDIANA:

In the Supreme Court.

Be it remembered that heretofore to-wit: On the 7th day of June, 1912, the same being the 11th Judicial Day of the May Term, 1912, of said Supreme Court, Harry C. Booth, by his attorneys, McNutt, Wallace & Sanders and Hays & Hays, filed in the office of the Clerk of the Supreme Court of said State of Indiana, a transcript of the record and proceedings had in the Sullivan Circuit Court of said State of Indiana in a cause wherein the said Harry C. Booth was the Appellant and the State of Indiana was the Appellee, together with an assignment of errors by Appellant and notices (2) served below.

2 Pleas Before the Honorable William H. Bridwell, Judge of the Fourteenth Judicial Circuit of the State of Indiana, and ex-Officio Judge of the Sullivan Circuit Court at the September Term of said Court, Held at the Court-House in the City of Sullivan, in Sullivan County, Indiana, Commencing on Monday, September 4th, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

#5633.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Failure to Establish Wash-house.*

Be it remembered that on the 1st day of November A. D. 1911 the same being the 51st. Judicial day of the said September Term 1911, of said Court held at the time and place and before the Honorable Judge aforesaid the following proceedings by the said Court were had in said cause, to-wit:

Comes now the State of Indiana by her Attorney Fred F. Bays, into open court and files affidavit against the defendant herein, which affidavit is in the words and figures as follows, to-wit:

STATE OF INDIANA,
*County of Sullivan:*

Sullivan Circuit Court, September Term, 1911.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Affidavit for Failure to Establish Wash-house.*

Affidavit.

Harry Ritchie being duly sworn, says on his oath: That on the 7th day of March A. D. 1911, at and in the County of Sullivan and State of Indiana, Harry C. Booth did then and there unlawfully being then and there and from the said day continuously up to the time of the filing of this affidavit and being now superintendent of mine #25, in Sullivan County, Indiana, belonging to the Consolidated Indiana Coal Company, that at the time and place named, mine #25, belonging to the Consolidated Indiana Coal Company, was a coal mine then and there situate in which 3 persons were then and continuously since have been and now are employed and that said Harry C. Booth was then and there superintendent and in charge of said mine; that twenty of the employees of said mine then and there in writing requested the said Harry C. Booth, while superintendent and in charge of said mine, to provide a wash-room or wash-house for the use of persons employed in said mine; that said request in writing was made to Harry C. Booth and directed to him under and in the name of H. C. Booth, as such superintendent, but that this defendant Harry C. Booth and H. C. Booth is one and the same person; that said Harry C. Booth being superintendent and in charge of said mine, as aforesaid, and having been requested, as aforesaid, did then and there unlawfully fail and refuse to provide a suitable wash-room or wash-house or any wash-room or wash-house whatever for the use of persons employed in said mine and that ever since said day up to the present time, he has unlawfully refused, neglected and wholly failed to provide any wash-room or wash-house for the use of persons employed in said mine, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Indiana.

HARRY RITCHIE.

Subscribed and sworn to before me this 1st. day of November, 1911.

FRED F. BAYS,
*Prosecuting Attorney.*

No. 5633, Sullivan Circuit Court, September Term, 1911. State of Indiana vs. Harry C. Booth. Affidavit for Failure to Establish Wash-house. Filed Nov. 1st, 1911. Arthur E. De Baun, Clerk Sullivan Cir. Court. Approved by me. Fred F. Bays, Prosecuting Attorney.

*Warrant.*

And bench warrant is ordered for said defendant and bond fixed at $100.00.

And afterwards, to-wit, on the 27th. day of November, 1911, the same being the 1st Judicial day of the November Term
4 1911, of said Court, begun, held and continued at the Court House in Sullivan, Indiana, commencing on the 27th. day of November 1911, before the Honorable Judge aforesaid, the following further proceedings were had by said Court in said cause, to-wit:

Comes now again the State of Indiana by her Attorney aforesaid into open Court, and comes now the defendant by Attorneys John T. and Will H. Hays, and files motion to quash the affidavit herein, which motion is in the words and figures as follows, to-wit:

STATE OF INDIANA,
*Sullivan County, ss:*

Sullivan Circuit Court, November Term, 1911.

#5633.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Motion to Quash Affidavit.*

The defendant moves the Court to quash the affidavit herein and to dismiss him from any charge therein contained, for the following reasons, and said motion is made separately and severally upon each of the said following reasons, to-wit:—

1. That the facts stated in said affidavit herein do not constitute a public offense.

2. That the said affidavit does not state the offense with sufficient certainty.

3. That the facts stated in the affidavit do not charge a crime under any valid law of the State of Indiana; and that said facts stated in the affidavit do not constitute a public offense under any law of the State of Indiana or of the United States.

4. That the act entitled "An Act Requiring the Owners or Corporators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees, and Providing a Penalty for Its Violation," approved March 8", 1907,
5 under which said affidavit is filed, is in violation of the constitution of the State of Indiana; and is unconstitutional.

4. That the Act entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and

maintain Wash-houses at certain places where laborers are employed, for the protection of health of the employee- and providing a penalty for its violation," approved March 8", 1907, is in violation of the Constitution of the United States; and said Act is unconstitutional.

5. Because said Act of the General Assembly of Indiana approved March 8", 1907, is in violation of Article 14" in Amendment of the Constitution of the United States.

6. Because said Act of the General Assembly of Indiana, approved March 8", 1907, under and by virtue of which said affidavit purports to be maintained, is in violation of the 5" Amendment of the Constitution of the United States.

7. Because said Act of the General Assembly of Indiana approved March 8", 1907, under and by virtue of which said affidavit purports to be maintained is in violation of the 14" Amendment of the Constitution of the United States.

8. Because said Act of the General Assembly of Indiana approved March 8". 1907, under and by virtue of which said affidavit purports to be filed and maintained is in violation of each of the Amendments to the Constitution of the United States and the same is unconstitutional and void.

9. That the Act under — said affidavit is filed is in violation of Section 1 of Article 1 of the Constitution of the State of Indiana, which provides, "We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happi-
6 ness," in that the said Act deprives persons including the defendant, of unalienable rights, and of liberty and the pursuit of happiness.

10. That the said Act under which the said affidavit is filed is in violation of Sec. 21 of Art. 1 of the Constitution of the State of Indiana, which provides that, "No man's particular services shall — demanded without just compensation. No man's property shall be taken by law without just compensation nor, except in case of the State, without such compensation first assessed and tendered; in that the said act provides for the taking of property by law without just compensation, and for the taking of property without such compensation being first assessed and tendered."

11. That said Act under which the said affidavit is filed is in violation of Sec. 23 of Art. 1, of the Constitution of the State of Indiana, which provides that "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens; in that the said act does grant to citizens and to a class of citizens, privileges and immunities which upon the same terms, do not equally belong to all citizens."

12. That the said Act under which said affidavit is filed is in violation of Sec. 25, Art. 1, of the Constitution of the State of Indiana, which provides that: "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution"; in that the said act provides that

the taking effect of the same shall be made to depend upon the request in writing of certain employees mentioned therein.

13. That the said act under which the said affidavit is filed is in violation of Sec. 26, Art. 1 of the Constitution of the State of Indiana, which provides, that, "The operation of the laws shall never be suspended, except by authority of the General Assembly"; in that the operation of the said Act is by the terms thereof, sus-
7 pended until certain persons and employees mentioned therein shall make a certain request in writing as provided therein.

14. That the said Act under which the said affidavit is filed is in violation of Sec. 23, Art. 4 of the Constitution of the State of Indiana, which provides that, "In all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State; in that the said Act is not general and of uniform operation throughout the State.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Atty's for Defendant.*

Number 5633, Sullivan Circuit Court, November Term 1911, State of Indiana vs. Harry C. Booth, Motion to Quash Affidavit, filed Nov. 27, 1911, Arthur E. De Baun, Clerk, John T. & Will H. Hays, McNutt, Wallace & Sanders, Attorneys for Defendant.

And afterwards, to-wit, on the 20th. day of February 1912, the same being the 2nd. Judicial day of the February Term 1912, of said Court, begun, held and continued at the Court House in Sullivan, Indiana, commencing on February 19th, 1912, before the Honorable Judge aforesaid, the following further proceedings were had by said Court in said cause, to-wit:

*Motion to Quash Overruled.*

Come now again the parties herein by Attorneys aforesaid into open Court and motion to quash is over-ruled and defendant at the time excepts and excepts severaliy to the ruling of the Court on each ground assigned as reasons for quashing affidavit herein.

And afterwards, to-wit, on the 11th. day of March, 1912, the same being the 19th Judicial day of the said February Term 1912, of said Court, held at the time and place and before the Honorable Judge aforesaid, the following further proceedings were had in said cause by said Court, to-wit:

8 *Trial & Finding. Arraignment Waived. Plea of Not Guilty.*

Comes now again the State of Indiana by Fred F. Bays, Prosecuting Attorney and comes also the defendant, Harry C. Booth by McNutt, Wallace and Sanders, and John T. and Will H. Hays, his

Attorneys and in person into open Court and defendant waives arraignment and pleads not guilty to the charge herein. And this cause being now at issue, the same is submitted to the Court for trial without the intervention of a jury.

And the Court having heard the evidence and being sufficiently advised in the premises, finds the defendant guilty as charged and that he should be fined in the sum of One ($1.00) Dollar and costs.

And now the said defendant files his written motion in arrest of judgment, which said motion is in the words and figures as follows, to-wit:

*Motion in Arrest of Judgment.*

STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court.

THE STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Defendant's Motion in Arrest of Judgment.*

The defendant, Harry C. Booth, moves the Court in arrest of judgment herein and for cause says:

1. That the affidavit on file herein and on which he is being held and tried does not state a public offense.

2. That the Act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted is in violation of the Constitution of the State of Indiana, and is void.

3. That the Act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted is in violation of the Constitution of the United States and is void.

Wherefore defendant prays the Court that he be discharged.

HAYS & HAYS,
McNUTT, WALLACE & SANDERS,
*Attorneys for Defendant.*

9 No. 5633, State of Indiana vs. Harry C. Booth, Motion in arrest of Judgment, Filed March 11th 1912, Arthur E. De Baun, Clerk.

*Motion in Arrest Overruled & Defendant Excepts.*

And the Court being sufficiently advised in the premises overrules the said motion in arrest of judgment, to which overruling of the Court, the defendant at the time excepts.

*Final Judgment and Exception.*

It is therefore considered, adjudged and decreed by the Court that defendant herein is guilty as charged and that he do make his fine to the State of Indiana in the penal sum of One ($1.00) Dollar and that he pay the costs and charges herein laid out and expended, taxed at $—; and that the defendant stand committed until said fine is paid or replevied.

*Appeal Prayed & Granted.*

To which judgment the defendant at the time excepts, and prays an appeal to the Supreme Court of the State of Indiana, which appeal is granted.

*Proof of Notice of Appeal to Prosecuting Attorney.*

And now comes the defendant, Harry C. Booth, and shows to the Court that he has given notice in writing to Fred F. Bays, Prosecuting Attorney, of his intention to appeal this cause to the Supreme Court of Indiana, which notice of appeal and the Sheriff's return thereon is in the words and figures following, to-wit:

STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Notice to Prosecuting Attorney.*

To Fred F. Bays, Prosecuting Attorney of the 14th Judicial Circuit, Sullivan County, Indiana:

You will take notice that the defendant in the above entitled cause has taken an appeal to the Supreme Court, from the Judgment rendered in the Sullivan Circuit Court on the 11th. day of March, A. D. 1912, in said cause, in favor of the State against this defendant, dated the 11th day of March, A. D. 1912.

HARRY C. BOOTH, *Defendant.*

10 STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Return of Service on Prosecuting Attorney.*

The within notice came to hand on the 11th. day of March, A. D. 1912, and I served the same upon the within named, Fred F. Bays, Prosecuting Attorney, by reading the same to him and also by delivering to him a true copy thereof upon this the 11th. day of March, A. D. 1912.

FRANK WIBLE,
*Sheriff of Sullivan County, Indiana.*

11 No. 5633, State vs. Booth, Appeal, Notice to Pros. Att'y. Filed March 11, 1912, Arthur E. De Baun, Clerk.

*Proof of Notice to Clerk.*

And the defendant also shows to the Court that he has served notice in writing of his intention to appeal this cause to the Supreme Court of Indiana, upon Arthur E. De Baun, Clerk of this Court, which said notice and the acknowledgment of such service is in the words and figures following, to-wit:

STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, A. D. 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Notice to Clerk.*

The Clerk of the Sullivan Circuit Court is hereby notified that Harry C. Booth, the Defendant in the above entitled cause, has taken an appeal to the Supreme Court, from the Judgment rendered against him in said Sullivan Circuit Court upon the 11th. day of March, A. D. 1912, and in favor of the State of Indiana, in said cause dated this 11th. day of March, A. D. 1912.

HARRY C. BOOTH, *Defendant.*

STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, A. D. 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Acknowledgment of Service.*

I, Arthur E. De Baun, Clerk of the Sullivan Circuit Court, acknowledge service of the above notice by copy thereof delivered to me this 11th. day of March, 1912.

ARTHUR E. DE BAUN, *Clerk.*

No. 5633, State of Indiana vs. Harry C. Booth, Appeal, Notice to Clerk, Filed March 11, 1912, Arthur E. De Baun, Clerk.

And the defendant now asks the Court to fix the Bond required by said Court in said appeal so as to stay further proceedings pending said appeal.

12 *Bond Fixed, Filed, and Approved.*

And the Court being sufficiently advised in the premises now fixes said Bond in the penal sum of One Hundred ($100.00) Dollars and the defendant tenders his said appeal bond with Philip H. Penna and J. C. Kolsem as sureties, which said bond is now filed and is by the Court approved and is in the words and figures following, to-wit:

*Appeal Bond.*

Know all men by these presents, that we, Harry C. Booth, Philip H. Penna, Jacob C. Kolsem, are held — firmly bound unto the State of Indiana in the sum of One Hundred Dollars ($100.00) for the payment whereof well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly *be* these presents.

Sealed by our seals and dated this 11th day of March A. D. 1912.

Whereas the said State of Indiana in the Circuit Court of Sullivan County in the State of Indiana, recovered judgment against the said Harry C. Booth for the sum of One Dollar ($1.00) and costs on the 11th. day of March, 1912. And whereas, the said Harry C. Booth has appealed from said Circuit Court to the Supreme Court of the State of Indiana.

Now, therefore, the conditions of the above obligation are to the effect following, to-wit:

That if the said defendant will duly prosecute his said appeal and abide by and pay the judgment and costs which may be rendered or affirmed against him, then this obligation is to be void, otherwise to remain in full force and effect.

HARRY C. BOOTH.
PHILIP H. PENNA.
J. C. KOLSEM.

Approved by me this 11th. day of March, 1912.
WILLIAM H. BRIDWELL,
*Judge of the Sullivan Circuit Court.*

13 No. 5633, State vs. Booth, Appeal Bond, Filed March 11, 1912, Arthur E. De Baun, Clerk.

*Process Stayed.*

And the Court now orders that all process herein be stayed, pending said appeal.

Record read, and signed in open Court this 11th. day of March, 1912.

WILLIAM H. BRIDWELL, *Judge.*

And afterwards, to-wit, on the 12th. day of March 1912, the following further proceedings were had and entry made in said cause, to-wit:

*Præcipe Filed.*

Be it remembered, That on this 12th. day of March 1912, the defendant by his Attorneys McNutt, Wallace & Sanders, and John T. & Will H. Hays filed in the office of the Clerk of the Sullivan Circuit Court in the State of Indiana, his Præcipe, which Præcipe is in the words and figures as follows, to-wit:

*Præcipe.*

STATE OF INDIANA,
*Sullivan County, ss:*

Sullivan Circuit Court, February Term, 1912.

No. 5633.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

Præcipe to Clerk.

The Clerk of said Court is hereby requested to make out and deliver to the defendant, Harry C. Booth, a full, true and complete

transcript of all papers on file and entries of record in the above entitled cause, for the purpose of appealing the same to the Supreme Court, and attach thereto this Præcipe and the original notices of appeal served on the Prosecuting Attorney and the Clerk of this Court.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Attorneys for Defendant.*

No. 5633 Sullivan Circuit Court, Feb. Term 1912, State of Indiana vs. Harry C. Booth, Order for Præcipe, Filed March 12, 1912, Arthur E. De Baun, Clerk.

*Certificate of Clerk.*

STATE OF INDIANA,
*Sullivan County, ss:*

14 I, Arthur E. De Baun, Clerk of the Sullivan Circuit Court of the County of Sullivan, in the State of Indiana, do hereby certify the foregoing to be a full, true and complete transcript of all papers filed and on file and of all Order Book entries of record and of all orders of the Court and the final judgment in the cause of the State of Indiana vs. Harry C. Booth being number 5633 of the Criminal causes in the Sullivan Circuit Court, in the State of Indiana, as the same appears of record and on file in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at my office at Sullivan, Indiana, this 14th day of March A. D. 1912.

[SEAL.] ARTHUR E. DE BAUN,
*Clerk Sullivan Circuit Court.*

Filed Jun- 7, 1912. J. Fred France, Clerk.

*Original Præcipe.*

15 STATE OF INDIANA,
*Sullivan County, ss:*

Sullivan Circuit Court, February Term, 1912.

No. 5633.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

Præcipe.

The Clerk of said Court is hereby requested to make out and deliver to the defendant, Harry C. Booth, a full, true and complete transcript of all papers on file and entries of record in the above

entitled cause, for the purpose of appealing the same to the Supreme Court, and attach thereto this Præcipe and the original notices of appeal served on the prosecuting attorney and the Clerk of this Court.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Attorneys for Defendant.*

16 STATE OF INDIANA:

In the Supreme Court of Indiana.

HARRY C. BOOTH, Appellant,
vs.
STATE OF INDIANA, Appellee.

*Assignment of Errors.*

The appellant, Harry C. Booth, says that there is manifest error in the judgment and proceedings in this cause in this, to-wit:—

1. The Court below erred in overruling appellant's motion to quash the affidavit filed against appellant.

2. The Court below erred in overruling appellant's motion to quash the affidavit of Harry Ritchie filed against appellant in said cause.

3. The Court below erred in overruling appellant's motion in arrest of judgment.

4. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense.

5. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense for the reason that the act entitled "An Act Requiring The Owners or Corporators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees, and Providing a Penalty for Its Violation," approved March 8", 1907 under which said affidavit is filed, is in violation of the constitution of the State of Indiana; and is unconstitutional.

6. The facts alleged in the affidavit filed against appellant in said cause do not state a public offense for the reason that the Act entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain Wash-houses at certain places where laborers are employed, for the protection
17 of health of the employee, and providing a penalty for its violation," approved March 8", 1907, is in violation of the Constitution of the United States; and said Act is unconstitutional.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Attorneys for Appellant.*

Filed Jun- 7, 1912. J. Fred France, Clerk.

18 STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, A. D. 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

The Clerk of the Sullivan Circuit Court is hereby notified that Harry C. Booth, the Defendant in the above entitled cause, has taken an appeal to the Supreme Court, from the Judgment rendered against him in said Sullivan Circuit Court upon the 11th day of March, A. D. 1912, and in favor of the State of Indiana, in said cause dated this 11th day of March, A. D. 1912.

HARRY C. BOOTH, *Defendant.*

STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, A. D. 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

I, Arthur E. De Baun, Clerk of the Sullivan Circuit Court, acknowledge service of the above notice by copy thereof delivered to me this 11th day of March, 1912.

ARTHUR E. DE BAUN, *Clerk.*

Filed Jun- 7, 1912. J. Fred France, Clerk.

19 STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Notice to Prosecuting Attorney.*

To Fred F. Bays, Prosecuting Attorney of the 14th Judicial Circuit, Sullivan County, Indiana:

You will take notice that the defendant in the above entitled cause has taken an appeal to the Supreme Court, from the Judgment rendered in the Sullivan Circuit Court on the 11th day of March,

A. D. 1912, in said cause, in favor of the State against this defendant, dated this the 11th day of March, A. D. 1912.

HARRY C. BOOTH, *Defendant.*

Filed Jun- 7, 1912. J. Fred France, Clerk.

20 STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court, February Term, 1912.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

The within notice came to hand on the 11 day of March, A. D. 1912, and I served the same upon the within named, Fred F. Bays, Prosecuting Attorney, by reading the same to him and also by delivering to him a true copy thereof upon this the 11" day of March, A. D. 1912.

FRANK WIBLE,
*Sheriff of Sullivan County, Indiana.*

Filed Jun- 7, 1912. J. Fred France, Clerk.

21 And on the same day the following further pleas and proceedings were had in said Court in said cause:

Come now the parties by counsel, and this cause is submitted (under rule 19) to the court for judgment and decree as provided by the act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Supreme Court adopted in relation thereto.

22 And afterwards, to-wit: on the 2nd day of August, 1912, the same being the 59th Judicial Day of said May Term, 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files a petition for additional time in which to file Appellant's brief, in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the same day the Court being sufficiently advised in the premises, grants Appellant's petition for additional time in which to file brief, said time being extended to and including September 5, 1912.

And afterwards, to-wit: on the 30th day of August, 1912, the same being the 83rd Judicial Day of the May Term, 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files his brief in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the 7th day of November 1912, the same being the 142nd Judicial Day of the May Term 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellee by counsel and files a petition for leave to file briefs in behalf of Appellee in the words and figures following: (Here Insert.)

23 And afterwards, to-wit: on the 8th day of November 1912, the same being the 143rd Judicial Day of the May Term 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being advised in the premises, grants Appellee's petition for leave to file briefs and Appellee's briefs (8) are filed, in the words and figures following (Here Insert.)

And afterwards, to-wit: on the 21st day of November 1912, the same being the 154th Judicial Day of the May Term, 1912 of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel and files a petition for an extension of time in which to file reply briefs in behalf of Appellant in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the same day the Court being sufficiently advised in the premises, grant*d* said petition and extends the time for filing Appellant's reply brief to and including December 14, 1912.

And afterwards, to-wit: on the 30th day of November 1912, the same being the 6th Judicial Day of the November Term, 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files his reply briefs (8) in the words and figures following: (Here Insert.)

24 And afterwards, to-wit: on the 28th day of January 1913, the same being the 56th Judicial day of the November Term, 1913 of said Court the following further pleas and proceedings were had herein:

Come now the parties by counsel and the Court being sufficiently advised in the premises, affirms the judgment of the Court below in the above entitled cause, with an opinion pronounced by Erwin, Judge, in the words and figures following: (Here Insert.)

25 THE STATE OF INDIANA:

In the Supreme Court, November Term, 1912, on the 28th Day of January, 1913, Being the 56th Judicial Day of said November Term, 1912.

No. 22224.

In the Case of HARRY C. BOOTH
vs.
THE STATE OF INDIANA.

Appealed from the Sullivan Circuit Court.

Hon. Quincy A. Myers, Chief Justice; Hon. John W. Spencer, Hon. Douglas Morris, Hon. Charles E. Cox, Hon. Richard K. Erwin, Associate Justices.

Come the parties by their Attorneys, and the Court being sufficiently advised in the premises, gives its opinion and judgment as follows, pronounced by Erwin, J.

26 This was a prosecution by the state of Indiana vs. Harry C. Booth, upon an affidavit charging that appellant was a superintendent of a coal mine in the county of Sullivan, and that after written demand of more than twenty employees of said mine, had failed to provide a wash room for the employees of said mine, in violation of an act of the general assembly, approved March 8th, 1907, Acts 1907, 193.

The affidavit in said cause, omitting the caption, reads as follows:

Harry Ritchie being duly sworn, says on his oath: That on the 7th day of March A. D. 1911, at and in the county of Sullivan and state of Indiana, Harry C. Booth did then and there unlawfully being then and there and from the said day continuously up to the time of the filing of this affidavit and being now superintendent of mine No. 25 in Sullivan County, Indiana, belonging to the Consolidated Indiana Coal Company, that at the time and place named, mine No. 25, belonging to the Consolidated Indiana Coal Company, was a coal mine then and there situated in which persons were then and continuously since have been and now are employed, and that said Harry C. Booth was then and there superintendent and in charge of said mine; that twenty of the employees of said mine then and there in writing requested the said Harry C. Booth, while superintendent and in charge of said mine to provide a wash room or wash house for the use of persons employed in said mine; that said request was made to Harry C. Booth and directed to him under and in the name of H. C. Booth, as such superintendent, but that this defendant, Harry C. Booth and H. C. Booth is one and the same person; that said Harry C. Booth being superintendent and in charge of said mine, as aforesaid, and having been requested, as aforesaid, did then and there unlawfully fail and refuse to provide a suitable wash room or wash house or any wash room or wash

house whatever for the use of persons employed in said mine, and that ever since said day up to the present time, he has unlawfully refused, neglected and wholly failed to provide any wash room or wash house for the use of persons employed in said mine, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the state of Indiana.

The appellant in due time moved to quash the affidavit.

His motion was in substance, that the law under which the prosecution was brought contravenes section 19, of Article 4 of the Constitution of the state of Indiana, and is in violation of article 14
27 of the amendment to the Constitution of the United States, also is violative of section 1, article 1, and section 21, article 1, also section 23, article 1, also section 25, article 1, and section 26, article 1 of the Constitution of the State of Indiana. The motion to quash the affidavit was, by the court, overruled, to which ruling of the court the defendant excepted.

The defendant entered a plea of not guilty and the cause was submitted to the court for trial without the intervention of a jury, which said trial resulted in the finding of the defendant guilty as charged in the affidavit.

A motion in arrest of judgment was seasonably made, which motion was, by the court, overruled, and judgment entered, fixing the penalty at a fine of one dollar and costs of the prosecution, from which judgment the defendant appeals to this court.

The assignment of errors in this court questions the constitutionality of the act under which the prosecution was brought.

The contention of the appellant is, that the title of the act limits the liability to owners and operators of coal mines and does not include superintendents.

The affidavit avers that the appellant is the superintendent of a coal mine.

Section 19, article 4 of the Constitution of this state provides, "Every act shall embrace but one subject, and matters properly connected therewith, which subject must be expressed in the title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed in the title."

The title of the act in question reads as follows: "An act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash houses at certain places where laborers are employed for the protection of the health of the employees and providing a penalty for its violation."

The question is whether the title of the act is broad enough to include superintendents.

Words and phrases shall be taken in their plain, or ordinary and usual sense. Subdivision 1, section 240 Burn's R. S. 1908.

The Standard Dictionary defines "operate" "To put in action and
28 supervise the workings of; to conduct or manage the affairs of; superintend; as to operate a mining business or a railroad. "Superintend" is defined by the same authority, "To have the

charge and direction of; especially some work or movement; regulate the conduct and progress of; responsible for; manage; supervise.

The words of a statute will be construed in their plain, ordinary and usual sense, unless such construction will defeat the manifest intent of the Legislature. White v. Furgeson, 29 App. p. 144-154, 64 N. E. p. 109; Coffenberry v. Madden, 30 App. p. 360, 363, 66 N. E. p. 64.

It is contended by the appellant that the act in question, being a criminal statute should be strictly construed. This contention is true to a limited extent. In Lewis' Sutherland Statutory Construction on page 962, the author uses the following language: "The rule that penal laws are to be construed strictly is perhaps not much less old than con-truction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the Legislature. It is the Legislature, not the courts, which is to define a crime and ordain its punishment. It is said that not-with-standing this rule, the intention of the law-makers must govern in the construction of penal, as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is the modification of the ancient maxim and amounts to this: that though penal laws are to be construed strictly, they are not to be so strictly construed as to defeat the obvious intention of the Legislature. The maxim is not to be so applied as to narrow the words in their ordinary acceptation, or in that sense in which the Legislature had obviously used them, would comprehend. The intention of the Legislature is to be collected from the words they employ."

The same author on page 981 has this to say further on the same subject: "A penal statute should receive a reasonable and common sense construction, and its force should not be frittered away by nicities and refinements at war with the practical administration of justice. To the same effect, see State v. Louisville & N. R. R. Co. — Ind. —; 96 N. E. p. 340-42 and cases cited.

The Legislature while not using the word superintendent evidently intended in the title of the act that it should apply to those having the supervision; the conduct or management of; the charge and direction and be responsible for and regulate the conduct and progress of the same.

We are of the opinion that the title of the act is comprehen-
29 sive enough to include superintendents of mines.

Appellant presents the further question that the act in question is in controvention of the 14th amendment of the Constitution of the United States, in, that the act denies to coal companies the equal protection of the law, and discriminates between coal mining and other classes of business; that it discriminates between the different classes of persons engaged in coal mining; deprives the defendant of his property without due process of law.

The 14th amendment does not impair the police power of the state, nor does it prohibit one class of business being regulated by special provisions. State v. Richcreek, 167 Ind. p. 217-24-28 and cases

cited; Barbier v. Connolly, 113 U. S. p. 27; Soon Hing v. Crowley, 113 U. S. p. 703-9.

It is further insisted that the act in question is too indifinite and uncertain in its terms.

It certainly can not be said that this act is indifinite as to its terms and requirements. It could not be made more certain without setting out plans and specifications for each building required at each mine.

The appellant contends that as the affidavit charges that he failed and refused to provide a suitable wash room that he can not be ameanable under the statute. The word "provide" means, to make, procure or furnish for future use, prepare. Standard Dictionary; Swartz v. Lake Co. 158 Ind. 141-8-9.

The appellant raises the further question that the act in requiring the defendant to furnish the washhouse, deprives the owner or operator of property without compensation and in that respect contravenes the 14th amendment to the Constitution of the United States.

A law which protects the lives, health, safety and comfort of employees is within the police power of the state. P. C. C. & St. L. R. R. Co. v. Brown, 67 Ind. 45-7-8; State v. Richcreek, 167 Ind. p. 217-22; State v. Barrett, 172 Ind. p. 169-79; Inland Steel Co. v. Yedinak, 172 Ind. 423-33, and cases cited; Barrett v. State, 175 Ind. 112.

It rests solely with the legislative discretion, inside the limits fixed by the Constitution, to determine when public safety or welfare requires the exercise of the police power.

Courts are authorized to interfere and declare a statute unconstitutional only when it conflicts with the Constitution; with wisdom, policy or necessity of such an enactment, they have nothing to do. 18 Am. and Eng. Ency. of Law 746; Walker v. Jameson, 140 Ind. p. 591-97.

The appellant insists that the act is invalid for the reason that it is for the benefit of individuals employed in a particular mine, and that its operation is left entirely to the dictation of certain persons.

That a certain law may be called into exercise by petition does not violate article 1, section 25 of the Constitution. State v. Gerhardt, 145 Ind. p. 439-470-2; Isenhour v. State, 157 Ind. p. 517-521-23; Bowlin v. Cochran, 161 Ind. p. 486-880-89; McPherson v. State, 174 Ind. p. 60-70-76, and cases cited.

This act is not open to the infirmities suggested by appellant in that it only applies to coal mines and not other classes of business.

This same question was raised in the case of Soon-Hing v. Crowley, supra, and decided advers-ly to the contention of appellant. Justice Fields uses the following language in the later case: "The specific regulation of one kind of business, which may be necessary for the protection of the public can never be the just grounds of complaint, because like restrictions are not imposed upon other business of a different kind." The same doctrine was declared in Barbier v. Connolly, supra. It will not be doing violence to any of the authorities cited by the learned counsel for the appellant, to say that the question of whether the act is reasonable, is one for the Legislature, provided

it shall operate alike on all persons of a particular class. To the same effect see, Townsend v. State, 147 Ind. p. 624-33; Parks v. State, 159 Ind. 211-22-23; State v. Richcreek, 167 Ind. p. 217-222; Barrett v. State, 172 Ind. p. 169-179-83; State ex rel. Smith v. McClelland, 138 Ind. 395-8; State v. Kalsem, 130 Ind. 434-443; Gillett's Criminal Law, sec. 2.

If the appellant had made an honest effort to comply with the law and had proceeded within a reasonable time, after being petitioned as alleged in the affidavit to erect the wash-house, he might, with good grace present the argument, that the statute makes no provision as to when he must comply with the act.

The affidavit alleges that he was petitioned on March 7th, 1911, and that he had failed to comply with the request for more than a year, or until March 11th, 1912. Chicago etc. R. R. Co. v.
31 City of Crawfordsville, 164 Ind. p. 70-74; State v. L. & N. R. R. Co. 96 N. E. 340-344.

The provisions of the law is a salutory one and is no more unreasonable than the provision of the law which requires that mines shall be guarded, lighted and ventilated. This act has to do with the comfort, health and care of the employees of mines, and is within the legislative discretion. State v. Barrett, 172 Ind. 169-79.

The true test of a criminal law as to its effect, is that it shall state the crime with such certainty, that the person upon whom it operates, may with reasonable certainty, ascertain what the statute requires to be done.

In the case of Tover v. United States, 52 Fed. p. 917, *Chief* Justice Brewer uses the following language: "But in order to constitute a crime the act must be one which the party is able to know in advance, whether it is criminal or not."

The act in question has this provision as to the wash house: "To provide a suitable wash room or wash house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and shall be supplied with clean, cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe keeping of clothing."

All these provisions of the statute are so definite and certain in their terms that no one who makes an honest effort to comply therewith need err.

Each of the questions presented by the appellant in his assignment of errors, except the single one as to whether this act contravenes section 19, of article 4, of the Constitution have already been decided by this court in State v. Barrett, 172 Ind. p. 169, and State v. Louisville & N. R. R. Co., — Ind. p. —, 96 N. E. 340, Barrett v. State, 175 Ind. p. 112; Hirth-Krause Co. v. Cohen, 97 N. E. p. 1, — Ind. Sup. —.

These opinions are able and exhaustive discussions of the consti-

tutional questions presented by appellant in this cause and were decided adversely to the contention of appellant.

To extend this opinion would be to reiterate what has
32 already been decided in the cases last above cited.

We are of the opinion that the title of the act is comprehensive enough to include superintendents, and that the act does not contravene any of the provisions of the Constitution of the United States, or of this state, as claimed by appellant.

Judgment affirmed.

32½ And afterwards, to-wit: on the 22nd day of March 1913, the same being the 102nd Judicial Day of the November Term 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel and files a petition for a rehearing, with briefs (8) thereon and request for oral argument in the words and figures following: (Here insert.)

And afterwards, to-wit: on the 25th day of March 1913, the same being the 104th Judicial Day of the November Term, 1912, of said Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being advised in the premises, denies Appellant's request for oral argument on petition for rehearing in the words and figures following: (Here Insert.)

And afterwards, to-wit: on the 15th day of April 1913, the same being the 122nd Judicial Day of the November Term 1912, of said Supreme Court, the following further pleas and proceedings were had herein:

Come the parties by counsel and the Court being advised in the premises, overrules Appellant's petition for a rehearing in the words and figures following: (Here Insert.)

33 It is therefore considered by the Court that the judgment of the Court below in the above entitled cause, be in all things affirmed at the cost of the appellant all of which is ordered to be certified to said Court.

And it is further considered by the Court, that the appellee recover of the appellant the sum of — for its costs and charges in this behalf expended.

THE STATE OF INDIANA,
*Supreme Court:*

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the opinion and judgment of said Court in the above entitled cause.

In witness whereof, I hereto set my hand and affix the seal of said Court, at the City of Indianapolis, this — day of —— 191—.

[Seal Supreme Court State of Indiana.]

——— ——, *C. S. C.*

34 & 35 And afterwards, to-wit: on the 26th day of June, 1913, the same being the 28th Judicial Day of the May Term, 1913, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files in the office of the Clerk of the Supreme Court, his petition for the allowance of a writ of error, said petition and the allowance thereof being hereto next below attached, and being as follows:

36 Filed Jun- 26, 1913. J. Fred France, Clerk.

In the Supreme Court of Indiana.

No. 22224.

HARRY C. BOOTH, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

*Petition for Writ of Error to Supreme Court of the State of Indiana. From the Supreme Court of the United States.*

To the Honorable Jno. W. Spencer, Chief Justice of the Supreme Court of the State of Indiana:

The petition of Harry C. Booth, who resides in the city of Sullivan, in the county of Sullivan, State of Indiana, respectfully shows:

I. Heretofore, to-wit: On November 1st, 1911, a prosecution was begun in the Circuit Court of Sullivan County, in the State of Indiana, by the State of Indiana as prosecutor against your petitioner Harry C. Booth as defendant, upon an affidavit charging that your petitioner was a superintendent of a coal mine in the said County of Sullivan, State of Indiana, and that after written demand of more than twenty (20) employés of said mine, your petitioner had failed to provide a washroom for the employés of said mine, in violation of an act of the General Assembly of the State of Indiana approved March 8th, 1907, beginning on page 193 of the published Acts of 1907, a copy of which act is attached to this petition, made a part hereof, and marked "Exhibit A."

37 The affidavit in said prosecution was in the words and figures following:

STATE OF INDIANA,
*County of Sullivan:*

Sullivan Circuit Court, September Term, 1911.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Affidavit for Failure to Establish Wash-house.*

Harry Ritchie being duly sworn, says on his oath: That on the 7th day of March A. D. 1911, at and in the County of Sullivan and State of Indiana, Harry C. Booth did then and there unlawfully — being then and there and from the said day continuously up to the time of the filing of this affidavit and being now superintendent of mine #25, in Sullivan County, Indiana, belonging to the Consolidated Indiana Coal Company, that at the time and place named, mine #25, belonging to the Consolidated Indiana Coal Company, was a coal mine then and there situate in which persons were then and continuously since have been and now are employed and that said Harry C. Booth was then and there superintendent and in charge of said mine; that twenty of the employees of said mine then and there in writing requested the said Harry C. Booth, while superintendent and in charge of said mine, to provide a wash-room or wash-house for the use of persons employed in said mine; that said request in writing was made to Harry C. Booth and directed to him under and in the name of H. C. Booth, as such superintendent, but that this defendant Harry C. Booth and H. C. Booth is one and the same person; that said Harry C. Booth being superintendent and in charge of said mine, as aforesaid, and having been requested, as aforesaid, did then and there unlawfully fail and refuse to provide a suitable wash-room or wash-house or any wash-room or wash-house whatever for the use of persons employed in said mine and that ever since said day up to the present time, he has unlawfully re-
38 fused, neglected and wholly failed to provide any wash-room or wash-house for the use of persons employed in said mine, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Indiana.

HARRY RITCHIE.

Subscribed and sworn to before me this 1st day of November, 1911.

FRED F. BAYS,
*Prosecuting Attorney.*

II. That on the 27th day of November, 1911, your petitioner filed his written motion to quash said affidavit, which motion was in the words and figures following:

STATE OF INDIANA,
*Sullivan County, ss:*

Sullivan Circuit Court, November Term, 1911.

#5633.

STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Motion to Quash Affidavit.*

The defendant moves the Court to quash the affidavit herein and to dismiss him from any charge therein contained, for the following reasons, and said motion is made separately and severally upon each of the said following reasons, to-wit:

1. That the facts stated in said affidavit herein do not constitute a public offense.

2. That the said affidavit does not state the offense with sufficient certainty.

3. That the facts stated in the affidavit do not charge a crime under any valid law of the State of Indiana; and that said facts stated in the affidavit do not constitute a public offense under any law of the State of Indiana or of the United States.

4. That the act entitled "An Act Requiring the Owners or
39 Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of the Health of the Employés, and Providing a Penalty for its Violation," approved March 8th, 1907 under which said affidavit is filed, is in violation of the constitution of the State of Indiana; and is unconstitutional.

4. That the Act entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain Wash-houses at certain places where laborers are employed, for the protection of the health of the employè-, and providing a penalty for its violation", approved March 8", 1907, is in violation of the Constitution of the United States; and said Act is unconstitutional.

5. Because said Act of the General Assembly of Indiana approved March 8", 1907, is in violation of Article 14" in Amendment of the Constitution of the United States.

6. Because said Act of the General Assembly of Indiana, approved March 8", 1907, under and by virtue of which said affidavit purports to be maintained, is in violation of the 5" Amendment of the Constitution of the United States.

7. Because said Act of the General Assembly of Indiana approved March 8", 1907, under and by virtue of which said affidavit purports to be maintained, is in violation of the 14" Amendment of the Constitution of the United States.

8. Because said Act of the General Assembly of Indiana approved

March 8", 1907, under and by virtue of which said affidavit purports to be filed and maintained, is in violation of each of the Amendments to the Constitution of the United States and the same is unconstitutional and void.

9. That the Act under which said affidavit is filed is in violation of Section 1 of Article 1 of the Constitution of the State of Indiana, which provides, "We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness", in that the said Act deprives persons including the defendant, of unalienable rights, and of liberty and the pursuit of happiness.

10. That the said Act under which the said affidavit is filed is in violation of Sec. 21 of Art. 1 of the Constitution of the State of Indiana, which provides that, "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in case of the State, without such compensation first assessed and tendered;" in that the said act provides for the taking of property by law without just compensation, and for the taking of property without such compensation being first assessed and tendered.

11. That said Act under which the said affidavit is filed is in violation of Sec. 23 of Art. 1, of the Constitution of the State of Indiana, which provides that "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens; in that the said act does grant to citizens and to a class of citizens, privileges and immunities which upon the same terms, do not equally belong to all citizens."

12. That the said Act under which said affidavit is filed is in violation of Sec. 25, Art. 1, of the Constitution of the State of Indiana, which provides that: "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution"; in that the said act provides that the taking effect of the same shall be made to depend upon the request in writing of certain employés mentioned therein.

13. That the said Act under which the said affidavit is filed is in violation of Sec. 26, Art. 1 of the Constitution of the State of Indiana, which provides, that, "The operation of the laws shall never be suspended, except by authority of the General Assembly"; in that the operation of the said Act is by the terms thereof, suspended until certain persons and employees mentioned therein shall make a certain request in writing as provided therein.

14. That the said Act under which the said affidavit is filed is in violation of Sec. 23, Art. 4 of the Constitution of the State of Indiana, which provides that, "In all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State;" in that the said Act is not general and of uniform operation throughout the State.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Att'ys for Defendant.*

III. That on the 20th day of February, 1912, your petitioner's said motion to quash was, by the said Circuit Court of Sullivan County, Indiana, overruled, to which ruling of the Court your petitioner then and there duly excepted. That on the 11th day of March, 1912, your petitioner waived arraignment and entered a plea of "Not guilty". That thereupon on said last named date said cause and prosecution was submitted to the said Circuit Court of Sullivan County, Indiana, for trial without the intervention of a jury. That said trial court on the 11th day of March, 1912, found the defendant, your petitioner herein guilty as charged in the affidavit aforesaid. That your petitioner on March 11th, 1912, seasonably made and filed a motion in said Sullivan Circuit Court in arrest of judgment in said cause, which motion in arrest of judgment was in the words and figures following:

42 STATE OF INDIANA,
*County of Sullivan, ss:*

In the Sullivan Circuit Court.

THE STATE OF INDIANA
vs.
HARRY C. BOOTH.

*Motion in Arrest of Judgment.*

The defendant, Harry C. Booth, moves the Court in arrest of judgment herein and for cause says:

1. That the affidavit on file herein and on which he is being held and tried, does not state a public offense.

2. That the act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted, is in violation of the Constitution of the State of Indiana, and is void.

3. That the Act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted, is in violation of the Constitution of the State of Indiana, and is void.

Wherefore defendant prays the Court that he be discharged.

HAYS & HAYS,
McNUTT, WALLACE & SANDERS,
*Attorneys for Defendant.*

That thereupon and upon said last named date your petitioner's said motion in arrest of judgment, was by the Circuit Court of Sullivan County, Indiana, overruled and thereupon judgment was entered upon the finding of said court, which judgment fixed the penalty at a fine of one dollar ($1.00) and costs of the prosecution.

IV. That on the 11th day of March, 1912, your petitioner appealed to the Supreme Court of the State of Indiana, from said judgment of the Circuit Court of Sullivan County, and filed the transcript and record of appeal in the clerk's office of the Supreme Court of Indiana, June 7th, 1912. That in the course of, and as

grounds for said appeal in said cause, your petitioner on June 7th, 1912, filed in the Supreme Court of the State of Indiana, his assignment of errors, which assignment of errors is in the words and figures following:

43 STATE OF INDIANA:

In the Supreme Court of Indiana.

HARRY C. BOOTH, Appellant,
vs.
STATE OF INDIANA, Appellee.

*Assignment of Errors.*

The appellant, Harry C. Booth, says that there is manifest error in the judgment and proceedings in this cause in this, to-wit:

1. The Court below erred in overruling appellant's motion to quash the affidavit filed against appellant.

2. The Court below erred in overruling appellant's motion to quash the affidavit of Harry Ritchie filed against appellant in said cause.

3. The Court below erred in overruling appellant's motion in arrest of judgment.

4. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense.

5. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense for the reason that the act entitled "An Act Requiring the Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of the Health of the Employés, and Providing a Penalty for its Violation", approved March 8", 1907, under which said affidavit is filed, is in violation of the constitution of the State of Indiana; and is unconstitutional.

6. The facts alleged in the affidavit filed against appellant in said cause do not state a public offense for the reason that the
44 Act entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain Wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation, approved March 8", 1907, is in violation of the Constitution of the United States; and said Act is unconstitutional.

McNUTT, WALLACE & SANDERS,
JOHN T. & WILL H. HAYS,
*Attorneys for Appellant.*

That said cause was in due course of procedure thereafter submitted, briefed and argued in said Supreme Court of the State of Indiana.

V. That on January 28th, 1913, the Supreme Court of the State

of Indiana, affirmed the judgment aforesaid of the Circuit Court of Sullivan County, and in its decision of affirmance aforesaid, declared that the Act of the General Assembly in question does not contravene any of the provisions of the Constitution of the United States, or of the State of Indiana, as claimed by your petitioner.

VI. That on the 22nd day of March, 1913, your petitioner filed his petition and motion for a rehearing in said cause in said Supreme Court of Indiana, which petition and motion *is* in the words and figures following:

In the Supreme Court of Indiana.

No. 22224.

HARRY C. BOOTH, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

*Appellant's Petition for Rehearing.*

The appellant petitions the court for a rehearing in the above entitled cause, and respectfully represents that the court, in its opinion, erred on the following points, to-wit:

45 First. In holding that the facts stated in the affidavit constitute a public offense.

Second. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate the provisions of the Constitution of the State of Indiana.

Third. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate the provisions of the Constitution of the United States, or any amendment thereto.

Fourth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate the Fourteenth Amendment of the Constitution of the United States.

Fifth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and-

maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not
46 violate the Fifth Amendment to the Constitution of the United States.

Sixth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 1 of Article 1, of the Constitution of the State of Indiana.

Seventh. In holding that the act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 21 of Article 1, of the Constitution of the State of Indiana.

Eighth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 23 of Article 1, of the Constitution of the State of Indiana.

Ninth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does
47 not violate Section 25 of Article 1, of the Constitution of the State of Indiana.

Tenth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 26 of Article 1, of the Constitution of the State of Indiana.

Eleventh. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 23 of Article 4, of the Constitution of the State of Indiana.

Twelfth. In holding that the Act of the General Assembly of the State of Indiana, entitled "An Act requiring the owners or operators of coal mines and other employers of labor to erect and

maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," approved March 8, 1907, does not violate Section 19 of Article 4, of the Constitution of the State of Indiana.

Thirteenth. In holding that the title of the Act in controversy is comprehensive enough to include superintendents.

HENRY W. MOORE,
*Attorney for Appellant.*

That on the 25th day of March, 1913, the Supreme Court of Indiana overruled and denied your petitioner's petition and motion for a rehearing of said cause.

48 VII. That in said prosecution in said Circuit Court of Sullivan County, Indiana, and upon said appeal therefrom to the Supreme Court of the State of Indiana, there was drawn in question the validity of a statute of said State on the ground of its being repugnant to the Constitution of the United States, and the decision of said Courts, and of each of them, was in favor of the validity of said Act, or Statute.

Wherefore your petitioner prays that a writ of error may issue and that he may be allowed to bring up for review before the Supreme Court of the United States, the said decision and judgment of said Circuit Court of Sullivan County, Indiana, and of said Supreme Court of the State of Indiana; and that your petitioner may have such other and further relief in the premises as may be just; and that the aforesaid Act of the General Assembly of Indiana, be declared invalid; and your petitioner will ever pray, etc.

HARRY C. BOOTH, *Petitioner.*

HENRY W. MOORE,
*Terre Haute, Indiana;*
U. Z. WILEY,
T. J. MOLL,
*Indianapolis, Indiana,*
*Attorneys for Petitioner.*

UNITED STATES OF AMERICA,
*State of Indiana, County of Sullivan, ss:*

Harry C. Booth being duly sworn deposes and says that he is the petitioner above named; that the foregoing petition is true to his own knowledge.

HARRY C. BOOTH.

Subscribed and sworn to before me this 28th day of May, 1913. My Commission Expires January 14, 1917.

[Seal Notary Public, Indiana.]

WILL H. HAYS,
*Notary Public, Sullivan County.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

49 EXHIBIT "A" TO PETITION.

"An Act Requiring the Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of the Health of the Employés, and Providing a Penalty for Its Violation."

(S. 287. Approved March 8, 1907.)

*Coal Mining—Wash-houses for Laborers.*

SECTION 1. Be it enacted by the General Assembly of the State of Indiana, That for the protection of the health of the employés hereinafter mentioned it shall be the duty of the owner, operator, lessee, superintendent of, or other person in charge of every coal mine or colliery, or other place where laborers employed are surrounded by or affected by similar conditions as employés in coal mines, at the request in writing of twenty (20) or more employés of such mine or place, or in event there are less than twenty (20) men employed, then upon the written request of one-third (1/3) of the number of employés employed, to provide a suitable wash-room or wash-house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe-keeping of clothing. Provided, however, that the owner, operator, lessee, superintend-
50 ent of or other person in charge of such mine or place as aforesaid, shall not be required to furnish soap or towels.

*Penalty.*

SEC. 2. If any person, persons or corporation shall neglect or fail to comply with the provisions of this act, or shall maliciously injure or destroy or cause to be injured or destroyed said building or room, or any part thereof, or any of its appliances or fittings used for supplying light, heat or water therein, or shall do any act tending to the injury or destruction thereof, he or they shall be guilty of misdemeanor, and upon conviction shall be fined in any sum not to exceed five hundred ($500) dollars, to which fine may be added imprisonment in the county jail not to exceed sixty (60) days."

51 *Writ of Error to the Supreme Court of the State of Indiana from the Supreme Court of the United States.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

UNITED STATES OF AMERICA,
*State of Indiana, ss:*

The Chief Justice of the Supreme Court of the State of Indiana to the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States, Greeting:

Whereas in the record, proceedings and judgment in a proceeding in the Supreme Court of the State of Indiana, that being the highest court of law and equity of said State, wherein a decision can be had in a certain suit and prosecution by the State of Indiana against one Harry C. Booth, as defendant, there was drawn in question the validity of a certain act or statute of the General Assembly of the State of Indiana, on the ground of its being repugnant to the Constitution of the United States and the decision of said Supreme Court of Indiana was in favor of its validity, and,

Whereas said defendant, Harry C. Booth, by his petition presented to the undersigned and herewith annexed hereto as part hereof, has claimed and does claim that a manifest error hath thereby happened to his great damage;

Now therefore, in the belief and conviction, that such error, if any hath been done, should be duly corrected and that full and speedy justice should be done to the aforesaid petitioner, Harry C. Booth, in that behalf, the undersigned as such Chief Justice, hereby grants and issues this Writ of Error, directing and commanding that, judgment in said suit and prosecution having been finally given, the record and proceedings therein, under the Seal of the Supreme Court of Indiana, distinctly and openly, be sent to
52 the Supreme Court of the United States of America, together with this Writ of Error, at Washington, D. C. on the 6th day of October, 1913, in the said Supreme Court of the United States at a session to be then and there held, so that the Supreme Court of the United States, the record and proceedings aforesaid being inspected, may cause further to be done therein to correct such error, whatever of right should be done according to the laws and customs of the United States.

Witness the Chief Justice of the Supreme Court of the State of Indiana at the State Capitol at Indianapolis, in the State of Indiana, on this the 26th day of June, in the Year of Our Lord, One Thousand Nine Hundred and Thirteen, and of the State of Indiana, the ninety-eighth, and attested by the Clerk of said Court and by its Seal hereunto duly affixed by authority.

[Seal Supreme Court, State of Indiana.]

JOHN W. SPENCER,
*Chief Justice of the Supreme Court of Indiana.*

Attest:
J. FRED FRANCE,
*Clerk of the Supreme Court of the State of Indiana.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

53 And on the same — the following further pleas and proceedings were had in said Court, in said cause:

Comes now the appellant by counsel, and files a writ of error from the Supreme Court of the United States, to the said Supreme Court of Indiana, in this cause, said writ of error being hereto next below attached, and being as follows:

54 UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Indiana, Greeting:

Because in the record and proceedings, as also on the rendition of the judgment of a plea which is in the said Supreme Court, before you, between Harry C. Booth and The State of Indiana a manifest error hath happened, to the great damage of the said Harry C. Booth as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the Supreme Court of the United States, to be then and there held, that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of the District Court of the United States for the District of Indiana, this 15" day of July, A. D. 1913.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
*Clerk of the District Court of the United States for the District of Indiana.*

Copy of above writ for the defendant in error lodged in the Clerk's Office of the Supreme Court of Indiana on the 15th day of July, 1913.

In obedience to the above writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the above entitled cause, this 15th day of July A. D. 1913.

[Seal Supreme Court, State of Indiana.]

J. FRED FRANCE,
*Clerk of the Supreme Court of Indiana.*

55 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files his bond on appeal to the Supreme Court of the United States, in the penal sum of Five Hundred ($500) Dollars, which bond is taken and approved, being hereto below next attached, and being as follows:

56 Filed Jun- 26, 1913. J. Fred France, Clerk.

Supreme Court of the State of Indiana.

HARRY C. BOOTH, Appellant,
vs.
THE STATE OF INDIANA, Appellee.

Know all men by these presents, that we, Harry C. Booth, as principal, and Hugh Shirkie, as surety, both of the city of Sullivan, County of Sullivan, and State of Indiana, are held and firmly bound unto the State of Indiana, in the sum of Five Hundred ($500) Dollars to be paid to the said State of Indiana, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the 26th day of June, in the Year of Our Lord One Thousand Nine Hundred and Thirteen. Whereas the above named Harry C. Booth has prosecuted an appeal to the Supreme Court of the United States, to reverse the judgment and decree rendered in the above entitled cause, by the Supreme Court of the State of Indiana:

Now, therefore the condition of this obligation is such that if the above named Harry C. Booth shall prosecute said appeal to effect and answer all damages and costs, if he fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HARRY C. BOOTH.
HUGH SHIRKIE.

57 STATE OF INDIANA,
*County of Sullivan, ss:*

Hugh Shirkie being duly sworn upon his oath says that he signs the above and foregoing bond as surety for Harry C. Booth the principal therein. That he owns unencumbered real estate in the County of Sullivan, and State of Indiana, of the fair cash value of Twenty Thousand Dollars, and that he is worth over and above his indebtedness approximately the sum of Twenty Thousand Dollars, and further saith not.

HUGH SHIRKIE.

Subscribed and sworn to before me this 26th day of June, 1913.
LEON STERN,
*Notary Public.*

My Commission Expires Sept. 14-1914.

The above and foregoing bond, having been examined by me, the undersigned Chief Justice of the Supreme Court of the State of

Indiana, and being duly advised that it is sufficient, does hereby approve it.

JOHN W. SPENCER,
*Chief Justice of the Supreme Court of Indiana.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

58 And on the same day, the following further pleas and proceedings were had in said Court in said cause:

Comes now the Appellant by counsel, and files his citation on said writ of error, duly signed by the Hon. John W. Spencer, Chief Justice of said Supreme Court and proof of service of the citation on the defendants in error, said citation and proof of service thereof being hereto next below attached, and being as follows:

59 In the Supreme Court of the United States.

HARRY C. BOOTH, Plaintiff in Error,
against
STATE OF INDIANA, Defendant in Error.

On Writ of Error to the Supreme Court of the State of Indiana.

*Citation.*

To Hon. Thomas M. Honan, Attorney General of the State of Indiana, and to Hon. Fred F. Bays, Prosecuting Attorney of Sullivan County, Indiana.

On behalf of the State of Indiana, you are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, D. C. on Monday, October 6th, 1913, next from the date of service hereof, pursuant to a writ of error, filed in the Clerk's office of the Supreme Court of the State of Indiana, wherein Harry C. Booth is plaintiff in error, and the State of Indiana is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Spencer, Chief Justice of the Supreme Court of the State of Indiana, this 26th day of June, in the year of our Lord one thousand nine hundred and thirteen.

JOHN W. SPENCER,
*Chief Justice of Supreme Court of Indiana.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

60 I, Thomas M. Honan, Attorney General of the State of Indiana, do hereby acknowledge service of the foregoing citation, and also acknowledge the receipt of a copy of the same, this 26th day of June, 1913.

THOS. M. HONAN,
*Attorney General of the State of Indiana.*

I, Fred F. Bays, Prosecuting Attorney for the Sullivan Circuit Court, Sullivan County, Indiana, do hereby acknowledge service of the foregoing citation, and also acknowledge the receipt of a copy of the same, this 26" day of June, 1913.

FRED F. BAYS,
*Prosecuting Attorney of Sullivan County, Indiana.*

Filed Jun- 26, 1913. J. Fred France, Clerk.

61 And on the same day the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant by counsel, and files an assignment of error- in the Supreme Court of the United States, on the writ of error herein, said assignment of errors being hereto next below attached, and being as follows:

62 Filed Jun- 26, 1913. J. Fred France, Clerk.

Supreme Court of the United States.

HARRY C. BOOTH, Plaintiff in Error,
vs.
THE STATE OF INDIANA, Defendant in Error.

*Assignment of Errors.*

And now comes Harry C. Booth, plaintiff in error in the above entitled cause, and makes and files this his assignment of errors, and says there is manifest error in the proceedings and judgment of the Supreme Court of Indiana in said cause in this to-wit:

First. That the Supreme Court of the State of Indiana erred in holding that the facts stated in the affidavit constitute a public offense under the Act of the General Assembly of the State of Indiana, approved March 8, 1907 (Acts 1907, Chapter 121).

Second. That the Supreme Court of the State of Indiana erred in holding that the title to the Act of the General Assembly of the State of Indiana, approved March 8, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", is broad enough to include a "superintendent" of a coal mine.

63 Second A:

The Supreme Court of the State of Indiana erred in holding that the title of said Act does not contravene Article 4, Section 19 of the Constitution of the State of Indiana, which section provides that, "Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall

not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

Third. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, (Acts 1907, Chapter 121, being Section 8623 Burns' Revised Statutes of Indiana, 1908), being entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation," is within the police power of the State and does not deny the equal protection of the law to coal companies, in contravention of the 14th Amendment of the Constitution of the United States, which provides that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Fourth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are
64 employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate the 14th Amendment of the Constitution of the United States.

Fifth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of employés, and providing a penalty for its violation," does not contravene and is not in violation of the 5th Amendment to the Constitution of the United States, which among other things provides that, "No person shall be deprived of life, liberty, or property without due process of law."

Sixth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not deny the equal protection of the law to coal companies in contravention and violation of the 14th Amendment to the Constitution of the United States, which prohibits one class of business being regulated by special provisions of a State, by and through its law-making body.

Seventh. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana,

approved March 8th, 1907, entitled, "An Act requiring the
65 owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate Section 1, Article 1 of the Constitution of the State of Indiana, which provides that, "We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded in their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasable right to alter and reform their government."

Eighth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate Section 21, Article 1 of the Constitution of the State of Indiana, which provides that, "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation" etc.

Ninth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of In-
66 diana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate Section 23, Article 1 of the Constitution of the State of Indiana, which provides that, "The General Assembly shall not grant to any citizens, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Tenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate Section 25, Article 1 of the Constitution of the State of Indiana, which provides that, "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution."

Eleventh. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employes of labor to erect and

maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not violate Section 26, Article I of the Constitution of the State of Indiana, which provides that,
67 "The operation of the laws shall never be suspended, except by authority of the General Assembly".

Twelfth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not contravene, and is not in violation of Section 23, Article 4 of the Constitution of the State of Indiana, which provides that, "In all cases enumerated in the preceeding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State"; which preceeding Section 22, Article 4 of the Constitution of the State of Indiana, provides that, "The General Assembly of the State of Indiana shall not pass local or special laws in any of the following enumerated cases, that is to say", among other things, "for the punishment of crimes and misdemeanors".

Thirteenth. The Supreme Court of the State of Indiana erred in holding that the "title of the Act, is comprehensive enough to include superintendents, and that the Act does not contravene any of the provisions of the Constitution of the United States or of this State".

Fourteenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are em-
68 ployed, for the protection of the health of the employés, and providing a penalty for its violation", does not contravene any of the provisions of the Constitution of the United States.

Fifteenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, "An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where labo-ers are employed, for the protection of the health of the employés, and providing a penalty for its violation", does not contravene any of the provisions of the Constitution of the State of Indiana.

Sixteenth. The Supreme Court of the State of Indiana erred in holding that the motion of the plaintiff in error to quash the affidavit, was properly overruled by the Sullivan Circuit Court.

Seventeenth. The Supreme Court of the State of Indiana erred in affirming the judgment of the Sullivan Circuit Court.

Wherefore the plaintiff in error prays that the judgment of the Supreme Court of the State of Indiana, affirming the judgment of

the Sullivan Circuit Court, of Sullivan County, State of Indiana, be in all things reversed.

HENRY W. MOORE,
*Of Terre Haute, Indiana;*
ULRIC Z. WILEY,
T. J. MOLL,
*Both of Indianapolis, Ind.,*
*Attorneys for Plaintiff in Error.*

[Endorsed:] Filed Jun- 26, 1913. J. Fred France, Clerk.

69 STATE OF INDIANA:

In the Supreme Court.

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record, of proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Supreme Court of Indiana, in the above entitled cause, Number 22224, Harry C. Booth vs. The State of Indiana, appealed from Sullivan County; also the original petition for the allowance of the writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citation to the defendants in error and proof of service thereof; a copy of the original bond and its approval by the Chief Justice of said Supreme Court and the assignment of errors in the Supreme Court of the United States.

Which said transcript, annexed hereto, together with said original petition for the allowance of a writ of error, said original writ of error, original citation, copy of the original bond and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In Witness Whereof, I hereto set my hand and affix the seal of said Supreme Court, at the City of Indianapolis, this 15th day of July, 1913.

[Seal Supreme Court, State of Indiana. MDCCCXVI.]

J. FRED FRANCE,
*Clerk Supreme Court of Indiana.*

Endorsed on cover: File No. 23,812. Indiana Supreme Court. Term No. 661. Harry C. Booth, plaintiff in error, vs. The State of Indiana. Filed August 2d, 1913. File No. 23,812.

No. 231

IN THE

# Supreme Court of the United States

October Term, 1913.

~~No. 231.~~

HARRY C. BOOTH,
*Plaintiff-in-Error.*

*v.*

THE STATE OF INDIANA,
*Defendant-in-Error.*

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

## *BRIEF FOR PLAINTIFF IN ERROR.*

ULRIC Z. WILEY,
T. J. MOLL and
HENRY W. MOORE,
*Attorneys for Plaintiff-in-Error.*

Central City Publishing Co., Printers, Indianapolis.

## SUBJECT—INDEX.

## CASES CITED.

### A.



### B.



### C.

## *SOME ERRATA.*

In the motion of plaintiff in error to quash the affidavit on page 3 of the printed record in the 4th reason, first and second lines, the word "Corporators," appears, while it should be "operators."

On page 4 of the printed record, in reason No. 9 first line, appears to be an omitted word, and in the blank, the word "which," should be inserted.

On the same page, in No. 10, fourth line from the top, a word is omitted, and that evidently "be."

On page 9, in the copy of the appeal bond, in the 6th line thereof, appears the word "be," when it should be "by."

On page 12 of the printed record, in specification 5 of the Assignment of Errors, the word "Corporators" should be "Operators."

These slight clerical errors, are immaterial, and it is quite evident that they so appear in the original record, but we deem it proper to call the attention of the court to them.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1913.

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HARRY C. BOOTH,
*Plaintiff-in-Error*
*v.*
THE STATE OF INDIANA,
*Defendant-in-Error.*

No. 661.

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## IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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## *BRIEF FOR PLAINTIFF IN ERROR.*

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### *CONCISE ABSTRACT OF THE CASE, PRESENTING SUCCINCTLY THE QUESTIONS INVOLVED AND THE MANNER IN WHICH THEY ARE RAISED.*

The defendant in error brought and prosecuted this action in the Circuit Court of Sullivan County, Indiana, against the plaintiff in error, charging him with the violation of a criminal statute of the State of Indiana.

The affidavit upon which the plaintiff in error was

prosecuted, was filed in the Sullivan Circuit Court of Indiana on the 1st day of November, A. D., 1911, which affidavit is in the words and figures following, to-wit:

"State of Indiana, County of Sullivan:
SULLIVAN CIRCUIT COURT,
September Term, 1911.
STATE OF INDIANA,
*v.*
HARRY C. BOOTH.
Affidavit for Failure to Establish Wash-House.
Affidavit."

"Harry Ritchie being duly sworn, says on his oath: That on the 7th day of March, A. D., 1911, at and in the County of Sullivan and State of Indiana, Harry C. Booth did then and there unlawbeing then and there and from the said day continuously up to the time of the filing of this affidavit and being now superintendent of mine No. 25, in Sullivan County, Indiana, belonging to the Consolidated Indiana Coal Company, that at the time and place named, mine No. 25, belonging to the Consolidated Indiana Coal Company, was a coal mine then and there situate in which persons were then and continuously since have been and now are employed and that said Harry C. Booth was then and there superintendent and in charge of said mine; that twenty of the employees of said mine then and there in writing requested the said Harry C. Booth, while superintendent and in charge of said mine, to provide a wash-room or washhouse for the use of persons employed in said mine; that said request in writing was made to Harry C. Booth and directed to him under and in the name of H. C. Booth, as such superintendent, but that this defendant Harry C. Booth and H. C. Booth

is one and the same person; that said Harry C. Booth being superintendent and in charge of said mine, as aforesaid, and having been requested, as aforesaid, did then and there unlawfully fail and refuse to provide a suitable wash-room or wash-house or any wash-room or wash-house whatever for the use of persons employed in said mine and that ever since said day up to the present time, he has unlawfully refused, neglected and wholly failed to provide any wash-room or wash-house for the use of persons employed in said mine, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Indiana.

HARRY RITCHIE.

Subscribed and sworn to before me this 1st day of November, 1911.

FRED F. BAYS,
*Prosecuting Attorney.*"

(Original Rec. p. 2; Printed Rec. p. 2.)

*WARRANT.*

A bench warrant was thereupon issued for the plaintiff in error, and his bond fixed at $100.00.

(Original Rec. p. 3; Printed Rec. p. 3.)

*APPEARANCE.*

Subsequently on the 27th day of November, 1911, the plaintiff in error appeared in person and by attorneys and filed his written motion to quash the affidavit.

(Original Rec. p. 4; Printed Rec. p. 3.)

## *MOTION TO QUASH AFFIDAVIT.*

The motion of the plaintiff in error to quash the affidavit is as follows:

"State of Indiana, Sullivan County, ss:

SULLIVAN CIRCUIT COURT,

November Term, 1911.

No. 5633.

STATE OF INDIANA,

*v.*

HARRY C. BOOTH.

Motion to Quash Affidavit.

The defendant moves the Court to quash the affidavit herein and to dismiss him from any charge therein contained, for the following reasons, and said motion is made separately and severally upon each of the said following reasons, to-wit:

1. That the facts stated in said affidavit herein do not constitute a public offense.

2. That the said affidavit does not state the offense with sufficient certainty.

3. That the facts stated in the affidavit do not charge a crime under any valid law of the State of Indiana; and that said facts stated in the affidavit do not constitute a public offense under any law of the State of Indiana or of the United States.

4. That the act entitled "An Act Requiring the Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Washhouses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees, and Providing a Penalty for Its Violation," approved March 8th, 1907, under which said affidavit is filed, is in violation of the constitution of the State of Indiana; and is unconstitutional.

4. That the Act entitled "An Act Requiring the Owners or Operators of Coal Mines and other Employers of Labor to Erect and Maintain Washhouses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees and Providing a Penalty for its Violation," approved March 8th, 1907, is in violation of the Constitution of the United State; and said Act is unconstitutional.

5. Because said Act of the General Assembly of Indiana approved March 8th, 1907, is in violation of Article 14 in Amendment of the Constitution of the United States.

6. Because said Act of the General Assembly of Indiana, approved March 8, 1907, under and by virtue of which said affidavit purports to be maintained, is in violation of the 5th Amendment of the Constitution of the United States.

7. Because said Act of the General Assembly of Indiana, approved March 8th, 1907, under and by virtue of which said affidavit purports to be maintained is in violation of the 14th Amendment of the Constitution of the United States.

8. Because said Act of the General Assembly of Indiana, approved March 8th, 1907, under and by virtue of which said affidavit purports to be filed and maintained is in violation of each of the Amendments to the Constitution of the United States and the same is unconstitutional and void.

9. That the Act under which said affidavit is filed is in violation of Section 1 of Article 1 of the Constitution of the State of Indiana, which provides, "We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness," in that said Act deprives persons including the defendant, of unalienable rights, and of liberty and the pursuit of happiness.

10. That the said Act under which the said affidavit is filed is in violation of Sec. 21 of Art. 1 of the Constitution of the State of Indiana, which provides that, "No man's particular services shall —be demanded without just compensation. No man's property shall be taken by law without just compensation nor, except in case of the State, without such compensation first assessed and tendered; in that the said act provides for the taking of property by law without just compensation and for the taking of property without such compensation being first assessed and tendered."

11. That said Act under which the said affidavit is filed is in violation of Sec. 23 of Art. 1, of the Constitution of the State of Indiana, which provides that "The General Assembly shall not grant to any citizens, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens; in that the said act does grant to citizens and to a class of citizens privileges and immunities which upon the same terms, do not equally belong to all citizens."

12. That the said Act under which said affidavit is filed is in violation of Sec. 25, Art. 1, of the Constitution of the State of Indiana, which provides that: "No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this constitution"; in that said act provides that the taking effect of the same shall be made to depend upon the request in writing of certain employees mentioned therein.

13. That the said Act under which the said affidavit is filed is in violation of Sec. 26, Art. 1, of the Constitution of the State of Indiana, which provides, that, "The operation of the laws shall never be suspended, except by authority of the General Assembly," in that the operation of the said act is by the terms thereof, suspended until certain persons and employees mentioned therein

shall make a certain request in writing as provided therein.

14. That the said Act under which the said affidavit is filed is in violation of Sec. 23, Art. 4 of the Constitution of the State of Indiana, which provides that, "In all cases enumerated in the preceding section and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State; in that the said Act is not general and of uniform operation throughout the State."

(Original Rec. p. 4; Printed Rec. pp. 3 to 5.)

*MOTION TO QUASH OVERRULED.*

The motion of the plaintiff in error to quash the affidavit was subsequently, to-wit: On the 20th day of February, 1912, overruled, to which ruling he excepted.

(Original Rec. p. 7; Printed Rec. p. 5.)

*ARRAIGNMENT WAIVED, PLEA OF NOT GUILTY ENTERED, TRIAL AND FINDING.*

And afterwards, to-wit: On the 11th day of March. 1912, the plaintiff in error waived arraignment, entered a plea of not guilty, the cause was submitted to the court for trial without the intervention of a jury, and a finding made and entered that he was guilty as charged in the affidavit, and a fine assessed against him of $1.00.

(Original Rec. p. 8; Printed Rec. pp. 5, 6.)

*MOTION IN ARREST OF JUDGMENT.*

Thereupon the plaintiff in error filed his motion in arrest of judgment, which motion is in the words and figures following, to-wit:

"State of Indiana, County of Sullivan, ss:

IN THE SULLIVAN CIRCUIT COURT.

STATE OF INDIANA,

*v.*

HARRY C. BOOTH.

Defendant's Motion in Arrest of Judgment.

The defendant, Harry C. Booth, moves the Court in arrest of judgment herein, and for cause, says:

1. That the affidavit on file herein and on which he is being held and tried does not state a public offense.

2. That the Act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted is in violation of the Constitution of the State of Indiana, and is void.

3. That the Act of the General Assembly of the State of Indiana, under and by virtue of which he is being prosecuted is in violation of the Constitution of the United States and is void.

Wherefore defendant prays the Court that he be discharged.

HAYS & HAYS,
MCNUTT, WALLACE & SANDERS,
*Attorneys for Defendant."*

(Original Rec. p. 8; Printed Rec. p. 6.)

*MOTION IN ARREST OF JUDGMENT OVERRULED AND DEFENDANT EXCEPTED.*

The motion of the plaintiff in error was overruled to which ruling of the court he at the time excepted.

(Original Rec. p. 8; Printed Rec. p. 6.)

*FINAL JUDGMENT AND EXCEPTIONS.*

Thereupon final judgment was rendered against the plaintiff in error, that he was guilty as charged and that he make his fine in the penal sum to the State of Indiana, in the sum of $1.00, and that he pay the costs and charges laid out and expended in said cause, to which final judgment plaintiff in error excepted, and from which judgment he prayed an appeal to the Supreme Court of the State of Indiana, which was granted.

(Original Rec. p. 9; Printed Rec. p. 7.)

*PROOF OF NOTICE OF APPEAL TO PROSECUTING ATTORNEY.*

In compliance with the statute of Indiana, the plaintiff in error gave and served notice of his appeal to the Supreme Court of Indiana, upon the prosecuting attorney of the Sullivan Circuit Court, which notice was duly served upon said prosecuting attorney on the 11th day of March, 1912.

(Original Rec. p. 9; Printed Rec. p. 8.)

*PROOF OF NOTICE TO CLERK.*

As required by the statute of Indiana, plaintiff in error served notice of his appeal to the Supreme Court of Indiana upon the clerk of the Sullivan Circuit Court, of which notice said clerk acknowledged service.

(Original Rec. p. 11; Printed Rec. pp. 8, 9.)

*APPEAL BOND.*

To perfect said appeal to the Supreme Court of Indiana, plaintiff in error filed an appeal bond in the Sullivan Circuit Court in the penalty of $100, with sureties approved by the court.

(Original Rec. p. 12; Printed Rec. pp. 9, 10.)

*ASSIGNMENT OF ERROR IN THE SUPREME COURT OF INDIANA.*

The plaintiff in error, being appellant in the Supreme Court of Indiana, assigned errors therein as follows:

"State of Indiana:

IN THE SUPREME COURT OF INDIANA.

HARRY C. BOOTH,

*Appellant,*

*v.*

STATE OF INDIANA,

*Appellee.*

Assignment of Errors.

The appellant, Harry C Booth, says that there is manifest error in the judgment and proceedings in this cause in this, to-wit:

1. The court below erred in overruling appellant's motion to quash the affidavit filed against appellant.

2. The court below erred in overruling appellant's motion to quash the affidavit of Harry Ritchie filed against appellant in said cause.

3. The court below erred in overruling appellant's motion in arrest of judgment.

4. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense.

5. The facts alleged in the affidavit filed against appellant in said cause do not constitute a public offense for the reason that the act entitled "An Act Requiring The Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees, and Providing a Penalty for Its Violation," approved March 8th, 1907, under which said affidavit is filed, is in violation of the Constitution of the State of Indiana; and is unconstitutional.

6. The facts alleged in the affidavit filed against appellant in said cause do not state a public offense for the reason that the act entitled "An Act Requiring The Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of Health of the Employees, and Providing a Penalty for Its Violation," approved March 8th, 1907, is in violation of the Constitution of the United States; and said Act is unconstitutional.

McNUTT, WALLACE & SANDERS,
JOHN T. and WILL H. HAYS,
*Attorneys for Appellant.*"

(Original Rec. p. 16; Printed Rec. p. 12.)

## *JUDGMENT OF THE SULLIVAN CIRCUIT COURT WAS AFFIRMED BY THE SUPREME COURT OF INDIANA.*

Such proceedings were had in the Supreme Court of Indiana as that on the 28th day of January, 1913, the judgment of the Sullivan Circuit Court of Indiana was affirmed by the judgment of the Supreme Court of Indiana, in an opinion pronounced by Mr. Justice Erwin.

(For opinion of the Supreme Court of Indiana see Original Rec. p. 24; Printed Rec. pp. 16 to 21);

(See also, 100 Northeastern Reporter 563.)

## *PETITION BY PLAINTIFF IN ERROR FOR A REHEARING.*

The plaintiff in error filed in the clerk's office of the Supreme Court of the State of Indiana, on the 22nd day of March, 1913, his petition for a rehearing, and his brief in support thereof, and afterwards, to-wit: April 15, 1913, the Supreme Court of Indiana overruled the petition for a rehearing, and rendered final judgment in said cause.

(Original Rec. p. 34; Printed Rec. p. 21.)

## *PETITION FOR A WRIT OF ERROR.*

Subsequently, to-wit: On the 26th day of June, 1913, the plaintiff in error filed his petition in the clerk's office

of the Supreme Court of the State of Indiana, for the allowance of a writ of error.

(Original Rec. p. 36; Printed Rec. p. 22.)

The petition of the plaintiff in error, for a writ of error to this court is in the Printed Record commencing on page 22 and is concluded on page 30.

## EXHIBIT "A."

Exhibit "A" to the petition for a writ of error of the plaintiff in error is the Act of the Legislature of Indiana, approved March 8th, 1907, the constitutionality of which is called in question by this appeal, is in the Printed Record at page 31, and is as follows:

## EXHIBIT "A" TO PETITION.

An Act Requiring the Owners or Operators of Coal Mines and Other Employers of Labor to Erect and Maintain Wash-houses at Certain Places Where Laborers are Employed, for the Protection of the Health of the Employes, and Providing a Penalty for Its Violation."

"(S. 287, Approved March 8, 1907.)

"Coal Mining—Wash-houses for Laborers.

"Section 1. Be it enacted by the General Assembly of the State of Indiana, that for the protection of the health of the employes hereinafter mentioned it shall be the duty of the owner, operator, lessee, superintendent of, or other person in charge of every coal mine or colliery, or other place where laborers employed are surrounded by or affected by similar conditions as employes in coal mines, at the request in writing of twenty (20)

or more employes of such mine or place, or in event there are less than twenty (20) men employed then upon the written request of one-third (1-3) of the number of employes employed, to provide a suitable wash-room or wash-house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe-keeping of clothing. Provided, however, that the owner, operator, lessee, superintendent of or other person in charge of such mine or place as aforesaid, shall not be required to furnish soap or towels."

"PENALTY.

"Section 2. If any person, persons or corporation shall neglect or fail to comply with the provisions of this act, or shall maliciously injure or destroy or cause to be injured or destroyed said building or room, or any part thereof, or any of its appliances or fittings used for supplying light, heat or water therein, or shall do any act tending to the injury or destruction thereof, he or they shall be guilty of misdemeanor and upon conviction shall be fined in any sum not to exceed five hundred ($500) dollars, to which fine may be added imprisonment in the county jail not to exceed sixty (60) days."

## *WRIT OF ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA FROM THE SUPREME COURT OF THE UNITED STATES.*

Afterwards to-wit: On the 26th day of June, 1913, there was issued out of the Supreme Court of the State of Indiana, by Hon. John W. Spencer, the Chief Justice of said court, the writ of error which is in the Printed Record at page 32.

Susequently, to-wit: On the 15th day of July, 1913, there was issued by the Supreme Court of the United States, a writ of error directing that the record and proceedings in said cause be certified to the Supreme Court of the United States, which writ of error is in the Printed Record at page 33.

### *APPEAL BOND.*

On June 26th, 1913, the plaintiff in error filed his appeal bond in the penalty of $500 with surety approved by the Chief Justice of the Supreme Court of the State of Indiana, which appeal bond and the approval thereof are in the Printed Record at pages 34 and 35.

On the same day, to-wit: June 26, 1913, there was issued by Hon. John W. Spencer, Chief Justice of the Supreme Court of Indiana, a citation directed to Honorable Thomas M. Honan, Attorney General of the State of Indiana, and the Honorable Fred F. Bays, Prosecuting Attorney of the Sullivan Circuit Court, which citation was duly served upon said attorney general and said prosecuting attorney, and was duly acknowledged by each of them.

(Printed Rec. pp. 35 and 36.)

## *ASSIGNMENT OF ERRORS.*

On the same day, to-wit: June 26th, 1913, plaintiff in error filed his assignment of errors, which assignment of errors is in the words and figures following, to-wit:

"SUPREME COURT OF THE UNITED STATES.

HARRY C. BOOTH,

*Plaintiff in Error.*

*v.*

STATE OF INDIANA,

*Defendant in Error.*

Assignment of Errors.

And now comes Harry C. Booth, plaintiff in error in the above entitled cause, and makes and files this his assignment of errors, and says there is manifest error in the proceedings and judgment of the Supreme Court of Indiana in said cause in this to-wit:

First. That the Supreme Court of the State of Indiana erred in holding that the facts stated in the affidavit constitute a public offense under the Act of the General Assembly of the State of Indiana, approved March 8, 1907, (Acts 1907, Chapter 121.)

Second. That the Supreme Court of the State of Indiana erred in holding that the title to the Act of the General Assembly of the State of Indiana, approved March 8, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' is broad enough to include a "superintendent" of a coal mine.

Second A. The Supreme Court of the State of Indiana erred in holding that the title of said Act does not contravene Article 4, Section 19 of the Constitution of the State of Indiana, which section provides that, 'Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.'

Third. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8, 1907, (Acts 1907, Chapter 121, being Section 8623 Burns' Revised Statutes of Indiana 1908), being entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' is within the police power of the State and does not deny the equal protection of the law to coal companies, in contravention of the 14th Amendment of the Constitution of the United States, which provides that, 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

Fourth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are em-

ployed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate the 14th Amendment of the Constitution of the United States.

Fifth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not contravene and is not in violation of the 5th Amendment of the Constitution of the United States, which among other things provides that, 'No person shall be deprived of life, liberty, or property without due process of law.'

Sixth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not deny the equal protection of the law to coal companies in contravention and violation of the 14th Amendment of the Constitution of the United States, which prohibits one class of business being regulated by special provisions of a State, by and through its law-making body.

Seventh. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are em-

ployed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate Section 1, Article 1 of the Constitution of the State of Indiana, which provides that, 'We declare that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and pursuit of happiness; that all power is inherent in the people; and that all free governments are, and of right ought to be, founded in their authority, and instituted for their peace, safety, and well-being. For the advancement of these ends, the people have, at all times, an indefeasable right to alter and reform their government.'

Eighth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate Section 21, Article 1 of the Constitution of the State of Indiana, which provides that, 'No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation,' etc.

Ninth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate Section 23, Article 1 of the Con-

stitution of the State of Indiana, which provides that, 'The General Assembly shall not grant to any citizens, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.'

Tenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate Section 25, Article 1 of the Constitution of the State of Indiana, which provides that, 'No law shall be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution.'

Eleventh. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not violate Section 26, Article 1 of the Constitution of the State of Indiana, which provides that, 'The operation of the laws shall never be suspended, except by authority of the General Assembly.'

Twelfth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are em-

ployed, for the protection of the health of the employes, and providing a penalty for its violation.' does not contravene, and is not in violation of Section 23, Article 4 of the Constitution of the State of Indiana, which provides that, 'In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State'; which preceding Section 22, Article 4 of the Constitution of the State of Indiana, provides that, 'The General Assembly of the State of Indiana shall not pass local or special laws in any of the following enumerated cases, that is to say,' among other things, 'for the punishment of crimes and misdemeanors.'

Thirteenth. The Supreme Court of the State of Indiana erred in holding that the 'title of the Act is comprehensive enough to include superintendents, and that the Act does not contravene any of the provisions of the Constitution of the United States or this State.'

Fourteenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the employes, and providing a penalty for its violation,' does not contravene any of the provisions of the Constitution of the United States.

Fifteenth. The Supreme Court of the State of Indiana erred in holding that the Act of the General Assembly of the State of Indiana, approved March 8th, 1907, entitled, 'An Act requiring the owners or operators of coal mines and other employers of labor to erect and maintain washhouses at certain places where laborers are employed, for the protection of the health of the

employes, and providing a penalty for its violation,' does not contravene any of the provisions of the Constitution of the State of Indiana.

Sixteenth. The Supreme Court of the State of Indiana erred in holding that the motion of the plaintiff in error to quash the affidavit was properly overruled by the Sullivan Circuit Court.

Seventeenth. The Supreme Court of the State of Indiana erred in affirming the judgment of the Sullivan Circuit Court.

Wherefore the plaintiff in error prays that the judgment of the Supreme Court of the State of Indiana, affirming the judgment of the Sullivan Circuit Court, of Sullivan County, State of Indiana, be in all things reversed.

HENRY W. MOORE,
*Of Terre Haute, Ind.*
ULRIC Z. WILEY,
T. J. MOLL,
*Both of Indianapolis, Ind.*
*Attorneys for Plaintiff in Error.*"

## *FINAL CERTIFICATE OF THE CLERK.*

The final certificate of the clerk certifying to the record on appeal is in the Printed Record at page 40.

## *QUESTIONS INVOLVED.*

The plaintiff in error expressly waives the first, second-A, seventh, sixteenth and seventeenth specifications of the assignment of errors in this court.

The questions involved are:

First. The constitutionality of the Act of the General Assembly of the State of Indiana under which the plaintiff in error was prosecuted, measured and judged

by the 14th Amendment to the Constitution of the United States.

Second. The constitutionality of said Act as measured and judged by the 5th Amendment to the Constitution of the United States.

Third. The constitutionality of said Act as measured and judged by Section 21, Article 1 of the Constitution of the State of Indiana.

Fourth. The constitutionality of said Act as measured and judged by Section 23, Article 1 of the Constitution of the State of Indiana.

Fifth. The constitutionality of said Act as measured and judged by Section 25, Article 1 of the Constitution of the State of Indiana.

Sixth. The constitutionality of said Act as measured and judged by Section 26, Article 1 of the Constitution of the State of Indiana, and,

Seventh. The constitutionality of said Act as measured and judged by Sections 22 and 23 of Article 4 of the Constitution of the State of Indiana.

## *THE MANNER IN WHICH THESE QUESTIONS ARE RAISED.*

The manner in which these questions are raised in the record is as follows:

First: By the motion of the plaintiff in error to quash the affidavit filed in the Sullivan Circuit Court.

Second: By the assignment of errors by the plaintiff in error, filed in the Supreme Court of the State of Indiana, and,

Third: By the assignment of errors by the plaintiff in error, filed in this court.

## Brief of the Argument.

The plaintiff in error was convicted of a misdemeanor upon the affidavit heretofore appearing in the record and in this brief, from which conviction he appealed to the Supreme Court of Indiana, and that court affirmed the judgment below. In the trial court, and also in the Supreme Court of Indiana, plaintiff in error contended that he was not guilty of the charge lodged against him, for many reasons that appear in the record, two of which were:

First: That the statute under which he was charged and convicted was invalid because it was violative of certain provisions of the Constitution of Indiana, and

Second: Because it is in violation of certain provisions of the Constitution of the United States, and especially the 14th amendment thereto, which provides that,

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any persons within its jurisdiction the equal protection of the law."

Third: Because it is in violation of the 5th amendment of the Constitution of the United States, which, among other things, provides that "no person shall be deprived of life, liberty or property without due process of law."

Under the 14th amendment, all citizens of the United States and of the several states of the Union, are guaranteed the equal protection of the laws.

*Santa Clara Co. v. Southern Pac. R. R. Co.*, 118 U. S. 394;
*Pembina Co. v. Pennsylvania*, 125 U. S. 181;
*Charlotte R. R. Co. v. Gibbes*, 142 U. S. 386;
*Covington v. Sanford*, 164 U. S. 578;
*Gulf Ry. Co. v. Ellis*, 165 U. S. 150;
*Smith v. Ames*, 169 U. S. 466.

The plaintiff in error is a citizen of the State of Indiana, as well as of the United States, as exhibited by the record, and therefore if the act of the General Assembly of the State of Indiana, under which he was prosecuted and convicted, contravenes any provision of the Constitution of the United States, it necessarily follows that he has been convicted under an invalid statute, and has been denied "the equal protection of the law."

The statute under consideration can only be upheld, if at all, upon the theory that it is within "the police power" of the state.

The Federal constitution does not grant any of the police powers to Congress, but such power is reserved to the states.

*Keller v. U. S.*, 213 U. S. 138.

The police power of the state, does not, by any means, confer upon the law-making body of the state unlimited power, but such power must be within constitutional limits, and consequently its exercise is subject to judicial review, and when exercised in an arbitrary or oppressive manner, laws may be annulled as violative of rights protected by the Constitution of the United States.

*McLean v. Arkansas*, 211 U. S. 539.

The protection of the federal constitution was in good

faith invoked throughout the proceedings in this cause, both in the trial court and in the Supreme Court of the state, and as the decision was against the rights claimed by plaintiff in error, resting upon the 14th amendment to the federal constitution and other provisions above specified, a federal question is thus presented and this court has jurisdiction.

Sec. 236 Judiciary Act, approved March 3, 1911.

It need not be made to appear that the judgment of the state court was erroneous, in order to give this court jurisdiction; the examination to determine whether the contention of plaintiff in error is well founded, involves the exercise of jurisdiction.

*Chicago Life Ins. Co. v. Needles,* 113 U. S. 574;
*Furman v. Nichol,* 8 Wall 44;
*Andrews v. Andrews,* 188 U. S. 14.

THE ACT NOT A VALID EXERCISE OF POLICE POWER.

Plaintiff in error affirms that the act in controversy is not a valid exercise of the police power, as measured and adjudged by the 5th and 14th amendments to the federal constitution.

Police power is justified solely upon the ground that the state is interested in the health and general welfare of its citizens.

Police power is based upon the proposition that ours is a government of majorities, and it is in perfect accord with our scheme of government that the interests of the minority should submit to the sovereign will of the majority. There is, however, a great difference between the proposition that the interests of the minority should submit

to the sovereign will of the majority, and the proposition that the interests and rights of the employer of labor should submit to the capricious will of a small number of employes who are not necessarily citizens, residents or taxpayers, and who may have no interest in the general welfare of the community.

> "The very idea that one man may be compelled to hold his life or means of living, or any material right essential to the enjoyment of life, at the mere will of another seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."
>
> *Yick Wo v. Hopkins,* 118 U. S. 356.

Any law which permits or authorizes the infliction of injury, or the abolishment of property rights, or places burdens upon one class of citizens and exempts another class from such burdens, "beyond what is necessary to provide for the public welfare and the general security, can not be included in the police power of the government. It is a governmental usurpation and violates the principles of abstract justice as they have been developed under our republican institutions."

> Tiedeman's Limitations of Police Power, Section I.

> Under the police power, "to justify the state in thus interposing its authority in behalf of the public, it must appear first, that the interest of the public generally, as distinguished from those of a particular class, requires such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose and are not unduly oppressive upon individuals. The legislature may not, under the guise of protecting public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determina-

> tion as to what is a proper exercise of its police powers, is not final or conclusive, but is subject to the supervision of the courts."
>
> *Lawton v. Steele*, 152 U. S. (38 Law Ed.) 385.

The Act of the General Assembly of the State of Indiana, the validity of which is involved in this case, does not pretend to be in the interest of the public, but applies solely and specifically to a particular class, engaged in a particular business, and is not in the interest of the public generally, as distinguished from any particular class. This being true, under the authority last cited, as it does not appear from the act itself that it was passed in the interest of the public generally, it is not a valid exercise of the police power of the state.

> Neither does it appear from the act that "the means are reasonably necessary for the accomplishment of the purpose, and are not unduly oppressive upon individuals."

It is a matter of common knowledge, of which courts take judicial notice, that the "class" to which the act applies constitutes a very small percentage of population, and this being true, the act could not possibly be in the interest of the public health of the commonwealth.

There are acts which the federal and state legislatures can not do without exceeding their authority. There are certain vital principles in our free, republican government which will determine and overrule an apparent and flagrant abuse of legislative powers; as to authorize manifest injustice by positive law, or to take away that security for personal liberty or private property for the protection whereof the government was established.

> Tiedeman's Limitation of Police Power, Section 2.

The act under consideration is inoperative in itself, for the reason that it can only be put into operation by the will and election of a specific number of the "class" to which it applies, and consequently it fastens a burden upon the owners and operators of coal mines, which is "a manifest injustice by positive law."

It thus affirmatively appears that upon demand or election, a specific number of employes may take the property of the employer, and fasten a burden upon him without any assurance as to how or for what purpose it will be used. The act does not provide that the owner or operator shall have any supervision or control over the "wash room or wash house," which is required by the act to be furnished for the use of employes, and all that the owner or operator is required to do is to furnish the room separate from the engine or boiler room, shall properly light and heat it and supply it with clean, cold and warm water, etc. The act turns over the "wash room or wash house" to the employes, who are not necessarily citizens of the state or of the United States, and for which they are in no wise responsible.

## The Act Does Not Serve the Purpose For Which It Was Intended.

The act in controversy does not necessarily serve the purpose for which it was intended. It creates a government of men and takes away from the mine owner or operator a government of laws, which is guaranteed under the bill of rights and constitution.

Under the police power that is vested in government, persons and property may be subject to necessary re-

straints and burdens to secure the general public good, and the doctrine is so broad that the statute must have for its purpose the general welfare of the public, when the statute is for the protection of the health of citizens. Laws passed in the exercise of the police power must necessarily relate to the purpose for which they are intended; that is, there must be some clear and real connection between the assumed purposes of the law and the actual provisions thereof, and the latter must tend in some plain and appreciable manner, toward the accomplishment of the objects for which the legislature may use this power.

*Colin v. Lisk,* 153 N. Y. 188.

> As was declared by this court in *Lawton v. Steele, supra,* "the legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts."

It is within the province of the legislature to determine what laws are needed for the protection of the public, and, so long as its measures are calculated and appropriated to accomplish that end, its discretion may not be reviewed by the courts. They must, however, have some relation to that end, and if they do not really relate to such a purpose, it becomes the duty of the courts to declare them invalid.

*In re Jacobs,* 98 N. Y. 98.

It is for the judiciary to see that the purpose to be reached by the law is a public one.

*In re Myers,* 72 N. Y. 1. 8.

It can not be said that a special act of the legislature which applies to a special class of employes, that class being a very small minority of the public, is an act which has to do with the general welfare and public health of the commonwealth. Under the mere guise of a statute to protect against wrong, the legislature can not arbitrarily strike down private rights and invade personal freedom or confiscate private property. The police power must be exercised within its appropriate sphere and by appropriate methods.

*Colin v. Lisk, supra;*
*People v. Arensberg,* 103 N. Y. 399.

The exercise of the police power of the government can only be invoked by the legislature, where the public good, health or welfare demands, and legislative authority to invoke such power is always subject to judicial scrutiny.

*Foster v. Scott,* 139 N. Y. 577, 584.

Whenever the legislature passes an act which transcends or contravenes the limits of the police power, it is the duty of the judiciary to pronounce it invalid and to annul the legislative attempt to invade the citizens' rights.

*People v. Warden,* 144 N. Y. 529, 535.

The police power must be exercised subject to the provisions of both the federal and state constitutions.

*Health Dept. of City of New York v. Rector, etc.,* 145 N. Y. 32, 39.

The statute under consideration is not for the purpose of the protection of public rights, but private rights, and the police power of the state can not be exercised in that way.

It may be observed, as suggested in the case of *Colin v. Lisk, supra,* "That the statute does not re-

late to the health, morals, safety or welfare of the public, but only to the private interests of a particular class of individuals. Nor can it be said that the means provided for the protection of these interests are reasonably necessary to accomplish that purpose. But, on the contrary, they are plainly oppressive and amount to an unauthorized confiscation of private property for the mere protection of private rights. It is in no manner attempted by this statute to protect any public interest or defend any public right. Nor is it calculated to accomplish that end, but under the guise of a pretended police regulation it arbitrarily invades personal rights and private property."

THE PLAIN PURPOSE OF THE ACT.

The statute in contemplation has for its sole purpose the regulation of private interests and the enforcement of private rights. In no sense can it be regarded as a public law, and consequently is not within the police power.

In this statute we have another example of class legislation, where the legislature has attempted improperly to interefer with the private rights of the citizens. This species of class legislation has been frequently condemned by the courts.

*In re Jacobs, supra;*

*People v. Marx,* 99 N. Y. 77;

*People v. Arensberg, supra;*

*People v. Gilson,* 109 N. Y. 380;

*Forest v. Scott,* 136 N. Y. 577.

"The object of government is to impose that degree of restraint upon human actions, which is necessary to the uniform and reasonable conservation and enjoyment of private rights."

Tiedeman's Limitations of Police Power, Section 1.

The act of the Indiana legislature called into review here, illustrates in fullest measure, the difference between the idea of governmental restraint upon human actions, and the idea of placing the imposition of the restraint in the hands of a few employes, who may have no interest in the government. In other words, the act is not enforcible by any power which the state government possesses, under its constitution, or its laws enacted thereunder, but it is enforcible only upon the demand, the whim or the election of a limited number of employes in the coal mining business. This is the exercise of an arbitrary power, for an arbitrary private right, and against a private business.

As was said by this court in *Yick Wo v. Hopkins, supra:*

> "When we consider the nature and the theory of our institution of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for play and action of purely 'personal and arbitrary power. * * * But the fundamental rights of life, liberty and the pursuit of happiness, considered constitutional law, which are the monuments showing the victorious progress of the race in securing to man the blessings of civilization, under the reign of just and equal law, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth, 'may be a government of laws and not of men,' for the very idea that one man may be compelled to hold his life or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."
>
> "The people of the United States erected their constitution, or form of government, to establish

justice, promote the general welfare, secure the blessings of liberty and to protect their persons and property from violence."

Tiedeman's Limitation of Police Power, Section 2.

THE ACT IS NOT IN HARMONY WITH THE PRINCIPLES OF GOVERNMENT JUST STATED.

The act in controversy, instead of being in harmony and furtherance of the principles of government just stated, is not to "promote the general welfare," for it does not apply to the public, but to a minority class of citizens.

Neither is the act for the purpose of protecting generally the property of citizens from violence, but, on the contrary, subjects private property of an employer to the unprotected and possible violent control of the employe, or of a combination of employes.

The business of mining coal is not different in kind, from the business of any large mercantile or manufacturing company, whose capital, experience and facilities may enable it to have a widely extended patronage. But such characteristics do not make the business one which is effected with a public interest, nor is such business of coal mining as such, recognized and regarded as unwholesome to miners.

*State ex rel Star Pub. Co. v. Associated Press,* 159 Mo. 510, 51 L. R. A. 151.

The purpose of the 14th amendment to the constitution of the United States, was and is, among other things, to protect the rights of those engaged in private business, and protect them in the use of their own property, and prohibit

unjust interference therewith by any person not entitled to share in the control or management thereof.

*American Surety Co. v. Shallenberger,* 183 Fed. Rep. 636;

*Chesapeake, etc. Co. v. Manning,* 186 U. S. 238, 46 L. Ed. 1144;

*People ex rel Rogers v. Coler,* 166 N. Y. 1, 52 L. R. A. 814;

*Street v. Varney Electrical Supply Co.* 160 Ind. 338, 98 Am. St. Rep. 325.

Any law which undertakes to abolish rights, the exercise of which do not involve infringement of the rights of others, or to limit the exercise of rights beyond what is necessary to provide for the public welfare and the general security, can not be included in the police power of the government. It is a governmental usurpation, and violates the principles of abstract justice, as they have been developed under our republican institutions.

*Starne v. People,* 222 Ill. 189, 113 Am. St. Rep. 389.

THE ACT GOES BEYOND WHAT IS NECESSARY.

The act under consideration goes beyond what is necessary to provide for the public welfare and the general security, and hence it infringes upon private rights, without any corresponding benefits to the public welfare and public health. If a mine owner and operator makes reasonable provision for the personal safety and protection of the miner, while he is actually engaged in his occupation, that is as far as he should be required to go. This proposition is

forcefully illustrated by the following excerpt from the opinion in the case of *Starne v. People, supra*:

> "The miner works in a place where he is exposed to dangers which do not assail those who labor above ground. Damp, darkness, noxious gases, lack or difficulty of ventilation and other causes contribute to render his situation, while at work, unpleasant, undesirable and perilous. The constitutional convention and the people of the state recognized this condition, and, by the constitution, wisely commanded the legislature to enact such laws as should secure his personal safety while in the mine. *When, however, he has ceased his labor, left the mine and reached the surface of the earth, he has, for the time being, passed beyond the operation of the constitutional provision and of any valid statute authorized thereby.* His situation is not then different from that of many other workmen leaving their employment at the end of the day, and his rights under the constitution are not then greater than those of such other workmen."
>
> *State ex rel Star Pub. Co. v. Associated Press,* 150 Mo. 410.

PURPOSE OF THE FOURTEENTH AMENDMENT.

As above stated, the purpose of the 14th amendment to the constitution of the United States is, among other things, to protect the rights of those engaged in private business, and protect them in the use of their own property, and prohibit unjust interference therewith by any person not entitled to share in the control or management thereof.

*American Surety Co. v. Shallenberger,* 108 Fed. Rep. 636;

*Chesapeake, etc. Tel. Co. v. Manning,* 186 U. S. 238, 46 L. Ed. 1144;
*People ex rel Rogers v. Coler,* 166 N. Y. 1;
*Street v. Varney Electrical Supply Co.,* 160 Ind. 338.

THE ACT DEPRIVES A CITIZEN OF PROPERTY WITHOUT COMPENSATION, OR DUE PROCESS OF LAW.

The act under consideration deprives the owner of property without compensation, and hence contravenes the 14th amendment.

It is apparent, upon inspection of the act, that it places upon mine owners or operators a burden not borne by other employers of labor, and is, therefore, special legislation, and for that reason invalid, unless for some reason it does not fall within the operation of the general rule forbidding legislation of that character.

*Starne v. People, supra;*
*Bailey v. People,* 190 Ill. 28;
*Eden v. People,* 160 Ill. 296;
*Harding v. People,* 160 Ill. 459.

The case of *Starne v. People, supra,* was based upon a statute of the State of Illinois, as follows:

> "That every owner or operator of a coal mine in this state shall provide and maintain a wash room at a convenient place at the top of each mine for the use of the miners and other employes of such mine; and such wash room shall be so arranged that such miners and other employes may hang therein their clothes for the purpose of drying the same."

In that case the statute was complete within itself, and did not require the petition, request or action of any one to

call it into power and put it in execution, and yet is was held unconstitutional.

It was there urged by the state that the statute should be sustained as a valid exercise of police power, as that power might be exercised to promote the comfort, health, welfare and safety of the public, and that the statute was referable to that power as a health regulation, for the reason that it would afford the miner an opportunity to avoid danger to his health, otherwise consequent upon his occupation.

The Supreme Court of Illinois recognized the rule that the legislature had power to form classes for the purpose of police regulation, if it did not arbitrarily discriminate between persons in the same situation. In the decision of the case the court said:

> "The only purpose of this act is to promote the health of miners and other persons employed in coal mines. Many men in the state are employed in the foundries and steel mills who work in a higher temperature than do the miners, surrounded by conditions deleterious to health and inimical to longevity. The convenience provided for by this act is not less desirable to them than to the coal miner. While the power of the legislature to form classes in reference to which the police power may be exercised is unquestioned, there can be no discrimination among individuals in forming such classes unless there is some difference in their condition which causes them to naturally fall into different groups. *Lasher v. People, supra; Harding v. People, supra; Horwich v. Walker-Gordon Laboratory Co.*, 205 Ill. 497, 68 N. E. 938, 98 Am. St. Rep. 254. It is apparent that a statute of this character, providing that a wash house should be provided for miners working at a greater depth than 200 feet below the surface, and making no similar provisions for miners

> working at a lesser depth, would be unconstitutional because it would make an arbitrary distinction between individuals surrounded by the same conditions."

## If There are Other Classes of Laborers Surrounded By Like Conditions, and They are Equally in Need of the Provisions of the Statute Under Consideration, Then the Act is Invalid Both Under the Federal and State Constitutions.

This point is clearly illustrated by the Supreme Court of Illinois in the case of *Starne v. People, supra.*

It is a matter of common knowledge that as to a person working in coal mines, at the close of his work on any day, his exposed skin is covered with grease and smoke and dust and grime and perspiration, and it is a matter of like common knowledge that other classes of laborers, such as those who are employed in foundries, steel mills, molding plants, tin mills, etc., at the close of their day's work, are in the same condition as to dirt, grime, etc.

In *Flora v. People,* 141 Ill. 151, the Supreme Court of that state quoted with approval from Cooley's Constitutional Limitations as follows:

> "Distinction in these respects should be based upon some reason which renders them important, like the want of capacity in infants and insane persons; but if the legislature should undertake to provide that persons following some specific lawful trade or employment should not have capacity to make contracts or to receive conveyances, or to build such houses that others were allowed to erect, or in any other way to make such use of their property as was permissible to others, it can scarcely be

> doubted that the act would transcend the duty beyond all legislative power, even if it did not come in conflict with express constitutional provision."

Continuing, the court said:

> "It is manifest that for the purposes of this statute no distinction exists between the coal miners and workmen in many other occupations in this state. The evil at which this statute is aimed is one that is not visited alone upon persons employed in coal mines. The legislature can not ameliorate the coal miners' condition under the guise of an exercise of police power and leave others unaided who suffer from like causes. Conceding the importance which defendant in error attaches to this act as a sanitary measure, it is apparent that it is not sufficiently comprehensive to remedy the evil at which it is aimed, because it will bring relief only for part of the people who suffer therefrom."

## A Law Administered With An Unequal Hand That Discriminates Between Persons Equally Entitled to Its Protection, is Unconstitutional.

Mr. Justice Mathews in the case of *Yick Wo v. Hopkins,* and *Woo Lee v. Hopkins,* 118 U. S. 356, speaking for the court said:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as particularly to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution."

The case under consideration, in our judgment, as

shown by the facts disclosed in the record, is within this class.

## The Constitutional Authority Delegated to the Legislature to Make Laws, Cannot Be Delegated to Another Body or Person.

The act, the validity of which is involved in the case at bar, is, within itself a dead letter. It would forever lie dormant if not called into exercise and activity by the request of private persons.

Such private persons may not be electors of the state, or citizens of either the state or the United States, and yet they may request the mine owner or operator to place a burden on his or its property, which is not borne by others under like or similar circumstances, and thus be made to bear an unequal burden.

*Rouse v. Thompson,* 228 Ill. 522.

Quoting from the above, the Supreme Court of Illinois said:

> "It is well settled that the power delegated to the legislature to make laws can not be by that body delegated; that the legislature must decide what the law shall be, and the power delegated to that department by the constitution can not be again delegated to any other body or authority; and that a law must be complete in all its terms and conditions when it leaves the legislature."

Cooley's Const. Lim. (7th Ed.) p. 163;

6 Amr. & Eng. Encyc. of Law (2nd Ed.), 1021;

*Arms v. Ayer,* 192 Ill. 601; 58 L. R. A. 277; 85 Am. St. Rep. 357;

*People v. Board of Election Commissioners,* 221 Ill. 9.

PRINCIPLE INVOLVED.

"The principle established by the foregoing authorities and many others which might be cited, does not, however, prevent the legislature from passing a law the ultimate operation of which may by its own terms be made to depend upon some contingency, such as the affirmative vote of the electors, in a given district. (*People v. Reynolds,* 5 Gilman 1; *People v. Solomon,* 51 Ill. 37; *Erlinger v. Boneau,* 51 Ill. 94), or upon the action of some municipality, commission or other public agency designated in the act. (*Home Ins. Co. v. Swigert,* 104 Ill. 653; *Schweiker v. Husser,* 146 Ill. 390). We have, however, examined the reported cases with care, and been unable to find any case, nor has the diligence of counsel been able to point out where the delegation of such power to an individual or a number of individuals has been sustained by the courts. The general rule is that such power can not be conferred upon a private person but must be delegated, if at all, to some public agency, such as a municipal corporation, commission, local board or public officer."

8 Cyc. 831;

*Banaz v. Smith,* 133 Cal. 102;

*Ohio, etc. Rd. Co. v. Todd,* 91 Ky. 175;

*People v. Bennett,* 26 Mich. 451;

*Fogg v. Union Bank,* 1 Baxt. (Tenn.) 435;

*Winters v. Hughes,* 3 Utah 443.

THE LEGISLATURE CANNOT ABDICATE ITS FUNCTIONS EXCEPT TO LAWFUL PUBLIC AGENCIES.

*People v. Bennett,* 29 Mich. 451, 18 Am. Rep. 107.

In the case last cited the Supreme Court of Michigan in a well considered opinion by Mr. Justice Campbell, said:

> "It is not in the power of the legislature to abdicate its functions or to subject citizens and their interests to the interference of any but lawful public agencies. * * * Such legislative authority as can be delegated at all must be delegated to municipal corporations or local boards and officers. * * *If it can be delegated at all * * * it must be delegated to somebody recognized by the constitution as capable of receiving such authority. * * * It is impossible to sustain a delegation of any sovereign power of any government to private citizens or to justify their assumption of it."

The sovereign power of government can not be delegated to private citizens, and the right of private citizens to call into exercise a statute, has always been denied.

8 Cyc. 831;
*Banaz v. Smith,* 133 Cal. 102;
*Ohio, etc. Rd. Co. v. Todd,* 91 Ky. 175;
*People v. Bennett,* 26 Mich. 451;
*Fogg v. Union Bank,* 1 Baxt. (Tenn.) 435;
*Winters v. Hughes,* 3 Utah 443.

## A Police Regulation, Under the Police Power of the State Cannot Be Established Except Directly By the State Through Its Law Making Power, or By Some Public Body Acting Under Its Sanction.

The police power of a state embraces regulations designed to promote the public convenience or the general prosperity as well as regulations designed to promote the public health, the public morals or the public safety.

*Chicago, etc. Ry. Co. v. State of Illinois ex rel Grimwood,* 200 U. S. (50 L. Ed.) p. 561;

*Lake Shore, etc. R. Co. v. Ohio,* 173 U. S. 285 (43 L. Ed.), 702;

*Pound v. Turck,* 95 U. S. 459 (24 L. Ed.), 525;

*Hannibal, etc. Rd. Co. v. Husen,* 95 U. S. 470 (24 L. Ed.), 529.

The statute under consideration does not come within the rule declared as quoted above, for the act does not claim to promote the public convenience or egneral prosperity, nor does it assume to promote the public health, the public morals or the public safety, but by specific provision it is made to apply only to a certain class of employes, and then not to be applied except upon request.

> "And the validity of a police regulation whether established directly by the state or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable, and whether really designed to accomplish a legitimate public purpose. Private property can not be taken without compensation for public use under a police regulation relating strictly to the public health, public morals or the public safety, any more than under the police regulation having no relation to such matters, but only to the general welfare. The foundations upon which the power rests are in every case the same."
>
> *Chicago, etc. Ry. Co. v. State of Illinois ex rel, supra.*

The act in question is both arbitrary and unreasonable, and not designed to accomplish a legitimate public purpose.

CASES CITED BY THE SUPREME COURT OF INDIANA.

In holding that the act under consideration is not invalid because it is for the benefit of individuals employed in a particular mine, and that its operation is left entirely to the dictation of certain persons and that the law might "be called into exercise by petition," does not violate Article 1, Section 25 of the constitution of the State of Indiana, the Supreme Court of Indiana cited the following cases:

*State v. Gerhardt,* 145 Ind. 439, 470-472;
*Isenhour v. State,* 157 Ind. 517, 521, 523;
*Bowlin v. Cochran,* 161 Ind. 486-489;
*McPherson v. State,* 174 Ind. 60, 70-76.

In our judgment the rule declared in the cases cited, is not in point, and hence the authorities are not supportive of the fact that a statute may be called into exercise by a petition or request of private parties, acting in their individual capacities. A brief review of the cases cited will suffice to show that they are not of controlling influence.

In the Gerhardt case, *supra,* the questions involved related to the violation of certain provisions of the liquor law for which appellee was prosecuted, and the constitutionality of that act was involved. No question under the act similar to the one under consideration was involved, but it did involve the question of a majority of the legal voters of a township or ward to sign a petition for an applicant for a liquor license, which had to be acted upon by a subordinate branch of government, to-wit: The Board of County Commissioners.

In the Isenhour case, *supra,* appellant was prosecuted under the pure food law of the state, and from a conviction

appealed and questioned the validity of the law, on the ground that the act was violative of the constitution providing that "no law shall be passed, the taking effect of which shall be made to depend upon any authority except as provided in this constitution." The pure food act made it the duty of "the Board of Health," which is a legislative created board, to adopt such measures as might be necessary to facilitate its enforcement, etc. In that case the court simply held that the act was valid, and that it operated upon the things done by the board when it had completed its work.

In the Cochran case, *supra,* the constitutionality of a gravel road law was involved, and that law provided that gravel roads might be constructed by an order of the Board of Commissioners of the county, upon the petition of a majority of the abutting land owners. No such a question as the one here was involved.

In the McPherson case, *supra,* a constitutional question was involved, growing out of the liquor law of 1908. That was a local option law, and its operation depended upon a majority vote of the legalized voters of any specific county, the result to be determined by the Board of County Commissioners.

It will therefore be seen without elaboration that all of the cases relied upon by the Supreme Court of Indiana involved, not the will or whim of, or caprice or prejudice of a limited number of persons, not necessarily citizens or voters, and in each case the proceedings in relation thereto were either judicial or *quasi* judicial.

In other words, the legislative authority under such statutes as we have just referred to, was delegated to local boards and officers legally constituted, which were capable

of exercising such authority, as declared in *People v. Bennett, supra.*

The legislature can not delegate sovereign power "to private citizens or justify their assumption of it."

THE ACT IS IN THE NATURE OF A "REFERENDUM," FOR IT LEAVES TO A LIMITED NUMBER OF PERSONS, NOT NECESSARILY CITIZENS, TO DETERMINE WHETHER IT SHALL BE ENFORCED.

There is no provision in the American system of government for a referendum on general subjects of legislative action, unless it may be in very rare and exceptional instances. The legislature is elected and authorized to make the laws. For that purpose the legislative power of the people is confided to them. That power can not regularly be assumed and exercised by the people themselves. Neither can it be referred back to the people by the legislature in any particular instance. Delegation of legislative power to the people at large, from whom it was derived, is just as much against the spirit of the constitution as a delegation of it to one citizen, and conversely. Nor can the legislature be allowed to shirk the responsibility of deciding upon the laws which should be made.

*Ex parte Wall,* 48 Cal. 279, 17 Am. Rep. 425;
*Schwartz v. People,* 46 Colo. 239.

The law making body has no power in enacting a general law, applicable to all the people of the state, to make its taking effect conditional upon the casting of a popular vote in its favor.

Opinion of Justices, 160 Mass. 586, 23 L. R. A. 113.

## The Act in Question is an Arbitrary Exercise of Police Power of the State, as Applied to Plaintiff in Error.

The act is repugnant to the 14th amendment to the constitution of the United States, because it denies plaintiff in error, a citizen of the United States, due process and the equal protection of the laws, and lays burdens upon him not borne by others under like circumstances and conditions, and thus abridges his privileges.

> "The privilgese and immunities of citizens of the United States, protected by the 14th amendment, are privileges and immunities arising out of the nature and essential character of the federal government, and granted or secured by the constitution, and due process of law and the equal protection of the laws are secured, if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."
>
> *Duncan v. State of Missouri,* 152 U. S. (38 L Ed.) pp. 485, 487;
>
> *Lawton v. Steele, supra.*

The statute under which the plaintiff in error was prosecuted and convicted, appears in a former part of this brief, under the caption "CONCISE ABSTRACT OF THE CASE," at pages 13 and 14.

The enacting clause of that statute which is also heretofore set out is as follows:

> "An act requiring the owners or operators of coal mines and other employers of labor to erect and maintain wash houses at certain places where laborers are employed, for the protection of the health

of the employes, and providing a penalty for its violation."

This act is now carried forward in Burns' Revised Statutes (Ind.) 1914, under Section No. 8623.

The enacting clause of the statute above quoted is not sufficiently broad to include a "superintendent" of a coal mining company. It embraces only "owners or operators of coal mines, and other employers of labor." The act itself does not pretend to apply except to employes of coal mining companies. The words "owners or operators" can only be construed to mean a corporation or persons who own coal mines, or a corporation or person or persons who operate coal mines. A "superintendent" neither includes the ownership nor operation of coal mines. The word "superintendent" etymologically, means one who superintends or oversees or has oversight of work and employes, etc. In other words, a "superintendent" is nothing more or less than an employe himself, and can only do that which his employer directs. He could not "provide a suitable wash room or wash house for the use of persons employed" in a coal mine without authority or direction from his employer to do so, and if it can be held that the act applies to a "superintendent," then it lays a burden upon him individually and personally for which he has no redress. If the title of the act is broad enough to include a "superintendent," which we deny, then he could be required, upon receiving the request specified in the statute, to provide for a wash-room or wash-house at his own expense. And that would come under class legislation and be directly violative of the 14th amendment in this, to-wit: That it would enable the State of Indiana to enforce a law which abridges the privileges and immunities of a cit-

izen of the United States, and would deprive plaintiff in error of "property without due process of law," and would deny to him "the equal protection of the law," as no such duty under the statute is required of any superintendent of any other character or class of business within the State of Indiana.

While it is true that the enacting clause includes the words "and other employers of labor," yet no such provision is carried forward and embraced in the body of the act.

### Delegation of Legislative Power Prohibited.

The legislature of a state can not divest itself of the police power by any grant or concession to any individual or group of individuals.

*Boston, etc. Co. v. Massachusetts,* 97 U. S. 25;
*Stone v. Mississippi,* 101 U. S. 914;
*Schrieveport, etc. Co. v. Schrieveport,* 122 La 1;
*State v. St. Paul, etc. R. Co.,* 98 Minn. 380;
*State v. Murphy,* 130 Mo. 10, 31 L. R. A. 798;
*Chicago, etc. Ry Co. v. Douglas County,* 134 Wis. 197, 14 L. R. A. N. S. 1074;
*Petersburg v. Petersburg, etc. Co.,* 102 Va. 654.

### Basis of Police Power.

Police power possessed by a state is for the purpose of legislating in the interest of public safety, health or welfare; and to justify an exercise of this power, it must appear that the interests of the public generally as distin-

guished from those of a few individuals, or of a particular class, require such interference.

*Redman v. State,* 134 Wis. 89, 14 L. R. A. N. S 229;

*Bonnett v. Vallier,* 136 Wis. 193, 17 L. R. A. N. S. 486;

*Commonwealth v. Campbell,* (Ky.) 117 S. W. 383.

Upon the foregoing authorities and the principles of law involved, we respectfully submit that the judgment of the Indiana Supreme Court be reversed, and the cause remanded.

ULRIC Z. WILEY,
T. J. MOLL and
HENRY W. MOORE,
*Attorneys for Plaintiff-in-Error.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1913.

No. 661.

HARRY C. BOOTH,
*Plaintiff in Error,*

v.

THE STATE OF INDIANA,
*Defendant in Error.*

**In Error to the Supreme Court of the State of Indiana.**

## BRIEF OF DEFENDANT IN ERROR.

The assignment of errors in this court contains eighteen specifications of error wherein the proceedings and judgment of the Supreme Court of Indiana is erroneous.

The first, second-A, seventh, sixteenth and seventeenth specifications of the assignment of errors are expressly waived by the plaintiff in error.

Brief of Plaintiff in Error, p. 22.

The remaining specifications of error call in question the correctness of the judgment of the Supreme

Court of Indiana upon three propositions, namely: *First:* Whether the Act of Indiana, known as Section 8623 of Burns' Revised Statutes of Indiana, 1914, is in violation of the 5th Amendment of the Constitution of the United States; *Second:* Whether said act is in violation of certain sections of the Constitution of Indiana; *Third:* Whether said act is in violation of the 14th Amendment of the Constitution of the United States.

*The act is not in violation of the 5th Amendment of the Constitution of the United States.*

1. The 5th Amendment operates exclusively in restriction of Federal power, is a limitation on Congress and has no application to state legislation.

Barron v. May, 7 Pet. 243;
Thorington v. Montgomery, 147 U. S. 490, 492;
Fallbrook Dist. v. Bradley, 164 U. S. 112, 158;
Brown v. New Jersey, 175 U. S. 172, 174;
Capital City v. Ohio, 183 U. S. 238, 245;
Barrington v. Missouri, 205 U. S. 483, 486.

*That the act is in violation of the Constitution of Indiana is a question not reviewable by this court.*

1. Whether a state statute is in conflict with some provision of the state constitution is a question to be determined solely by the Supreme Court of the State.

Medberry v. Ohio, 24 How. 413, 415;
Porter v. Foley, 24 How. 415, 420;
Barbier v. Connolly, 113 U. S. 27;

Brooks v. Missouri, 124 U. S. 394, 397;
Miller v. Cornwall R. Co., 168 U. S. 131, 134;
Brown v. New Jersey, 175 U. S. 172, 174;
Lombard v. West Chi. Park, 181 U. S. 33, 43;
Rasmussen v. Idaho, 181 U. S. 198, 200;
Manley v. Park, 187 U. S. 547, 551;
West v. Louisiana, 194 U. S. 258, 261.

2. Whether an indictment is sufficient under a state constitution, or the laws of a State, is not a Federal question.

Howard v. Fleming, 191 U. S. 126, 135;
Barrington v. Missouri, 205 U. S. 483, 487.

3. The interpretation placed upon a state statute by the highest court of the State is conclusive here.

Smiley v. Kansas, 196 U. S. 447 at 455, and cases cited.

4. Whether the statutes of a State have been duly enacted in accordance with the constitution of such State, is not a Federal question, and the decision of the state court is conclusive upon that question.

Leeper v. Texas, 139 U. S. 462, 467, and cases cited.

*The act is not in violation of the 14th Amendment of the Constitution of the United States.*

1. The 14th Amendment does not interfere with the police power of a State to prescribe regulations

to promote the health, safety, peace, morals, education, good order and general welfare of its people.

Barbier v. Connolly, 113 U. S. 27, 31;
Mugler v. Kansas, 123 U. S. 623, 666;
In re Kemmler, 136 U. S. 436, 449;
Jones v. Brim, 165 U. S. 180, 182.

2. The police power of a State is not unlimited and is subject to judicial review. The question arising for the judiciary is whether the exercise of that power is arbitrary or oppressive or in violation of some right protected by the constitution.

McLean v. Arkansas, 211 U. S. 539, 547.

3. If a law has a reasonable relation to the protection of the public health, safety or welfare, it is not to be set aside because the judiciary may differ with the legislature in its views of the policy, wisdom or expediency of the law. With these questions the courts are not concerned. The question for the court is merely one of power.

McLean v. Arkansas, 211 U. S. 539, 547;
Munn v. Illinois, 94 U. S. 113.

*The act does not deprive plaintiff in error of the equal protection of the law.*

1. Where an act embraces all persons under substantially like circumstances, and is not an arbitrary exercise of power, it does not deny the equal protection of the laws.

Barbier v. Connolly, 113 U. S. 27, 31-32;
Missouri Railway Co. v. Mackey, 127 U. S. 205, 209-210;

Jones v. Brim, 165 U. S. 180, 184, and cases cited;
Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 293;
Mallett v. North Carolina, 181 U. S. 589, 598-599.

2. The test is not whether the scope of the law is limited either as to territory or persons affected, but whether all persons brought under its influence are treated alike under similar circumstances and conditions. This court in Magoun v. Illinois Trust and Savings Bank, supra, said:

> "The clause of the 14th Amendment especially invoked is that which prohibits a State denying to any citizen the equal protection of the laws. What specifies this equality has not been and probably never can be precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly, upon all persons in similar circumstances. Kentucky Railroad Tax Cases, 115 U. S. 321, 337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. Hays v. Missouri, 120 U. S. 68."

3. Plaintiff in error contends that there are other

classes of business not within the scope of the law. This is never just ground of complaint.

Barbier v. Connolly, supra;
Soon Hing v. Crowley, 113 U. S. 703, 709;
Heath & Milligan, etc., Co. v. Worst, 207 U. S. 338.

In the latter case the court, per Mr. Justice Fields, said:

> "The specific regulations for one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind. The discriminations which are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions. It is only then that the discrimination can be said to impair that equal right which all can claim in the enforcement of the laws."

4. The fact that a special burden is placed upon a certain class does not render it class legislation or deny the equal protection of the law, as special burdens are often necessary for the general welfare.

Slaughterhouse Cases, 16 Wall. 36;
Munn v. Illinois, 94 U. S. 113;
Barbier v. Connolly, 113 U. S. 27, 31;
Heath & Milligan, etc., Co. v. Worst, 207 U. S. 338.

5. The question is whether such regulation is reasonable, as applied to this class.

Holden v. Hardy, 169 U. S. 366, 398.

6. The act of Indiana purports to apply to all coal mines within the jurisdiction of the state. It therefore applies alike to all members of this class, and does not deny the equal protection of the law.

Missouri Pacific R. Co. v. Humes, 115 U. S. 512, 523;
McLean v. Arkansas, 211 U. S. 539, 552;
Chicago, etc., R. Co. v. Arkansas, 219 U. S. 453, 466.

7. Whether the same restriction or burden should be applied to another business is a question of legislative discretion.

Missouri Railway Co. v. Mackey, 127 U. S. 205, 210;
Heath & Milligan, etc., Co. v. Worst, 207 U. S. 338.

*The act does not deny due process of law or abridge the privileges and immunities of citizens of the United States.*

1. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community.

Crowley v Christensen, 137 U. S. 86.

2. Regulations respecting the pursuit of a lawful trade or business if made in the interest of, and are conducive to the safety, health, peace, good order and morals of the community are a valid exercise of

the police power of a State, and form no subject for Federal interference.

Barbier v. Connolly, supra;
Soon Hing v. Crowley, supra;
Gundling v. Chicago, 177 U. S. 183, 188;
Lochner v. New York, 198 U. S. 45, 66;
McLean v. Arkansas, 211 U. S. 539, 546, 547.

3. What regulations are necessary in the exercise of the police power and to what business, trade or occupation they shall apply is a question for the legislative branch of the government to determine, and every presumption is to be indulged in favor of the validity of such a statute.

Sinking Fund Cases, 99 U. S. 700, 718;
Mugler v. Kansas, 123 U. S. 623, 661;
Lochner v. New York, 198 U. S. 45, 66-67;
McLean v. Arkansas, 211 U. S. 539, 549-551.

4. Reasonable regulation in exercise of the police power is not a denial of due process of law either as to special occupations or general classes of business.

Slaughterhouse Cases, 16 Wall 36;
Munn v. Illinois, 94 U. S. 113;
Barbier v. Connolly, 113 U. S. 27;
Soon Hing v. Crowley, 113 U. S. 703;
Powell v. Pennsylvania, 127 U. S. 678;
Plumley v. Massachusetts, 155 U. S. 461;
Holden v. Hardy, 169 U. S. 366;
Ohio Oil Co. v. Indiana, 177 U. S. 190.

5. The act does not deprive plaintiff in error of his property but impresses upon it a regulation which the Legislature, in its discretion has deemed wise.

Nash, etc., R. Co. v. Ala., 128 U. S. 96, 101-2.

6. The provisions of the 14th Amendment do not impair the police powers of the State or analogous powers.

Slaughterhouse Cases, supra;
Barbier v. Connolly, supra;
Powell v. Pennsylvania, supra;
Budd v. New York, 143 U. S. 517.

*In determining the validity of a statute courts may only look to the statute itself.*

Courts will look only to the face of the statutes to determine the scope and effect of the law.

Soon Hing v. Crowley, 113 U. S. 703, 710.

*The act is reasonable and not arbitrary and is in aid of the health of coal miners.*

The question before this court for review is, whether from a consideration of this act it appears conducive to an end which it is within the police power of a State to effect, and whether the burden placed upon the class affected is reasonable and not arbitrary.

It is common knowledge that coal miners perform their work beneath the surface of the ground, where the temperature is high as compared with that above

the surface. Their skin becomes covered with grease, smoke, dust, grime and perspiration. When they ascend to the top of the mine they encounter an extreme change of temperature, and their bodies are heated and covered with perspiration, their clothes are damp and soggy. If no place to wash themselves and change their clothing is provided, they are compelled to travel to their homes in such condition despite the extreme change of temperature. This is, to say the least, detrimental and injurious to the health and lives of those who perform such labor. If so, it is a matter about which the State, in the exercise of its police power, may and should seek to remedy.

The act requires all coal mine owners and operators to provide washhouses for the mine workers. It is not, therefore, an arbitrary discrimination, or any discrimination at all, for it requires all who own or operate mines to bear the same burden.

The contention is made that there are other classes of business where conditions exist that are injurious to health, that should be remedied. This forms no basis for complaint. It is only when other persons engaged in the same business are not treated alike, under the same conditions, that just complaint may be made that equal protection of the laws has been denied.

It is contended that men in steel mills and foundries work in higher temperatures than do miners, and that they are surrounded by conditions deleterious to health and inimical to longevity. These facts

may be admitted and many more instances cited, and still they contribute nothing to the determination of this case. If those facts be true, and something can and should be done, it is a proper matter for the Legislature to consider and remedy. Those facts do not show that coal miners do not need a washhouse. They do not show that the Legislature has favored coal miners and discriminated against coal mine owners and operators, because there is nothing to show that a washhouse is the thing necessary to alleviate the unhealthy and injurious conditions surrounding the worker in steel mills and foundries. Further, there is nothing to show that they are not provided with ample washing facilities at their place of work. These are all matters for legislative inquiry and not judicial determination, and the act in question bespeaks the legislative finding of fact.

The preservation of the health of the people is a proper object of the police power of State.

> "It is as much for the interest of the State that the public health should be preserved as that life should be made secure."
>
> Holden v. Hardy, 169 U. S. 366, 395.

With this end in view many laws have been enacted by the various States, having as their aim the preservation of the health of the citizens of the State, and they have been upheld by the courts. Many laws have been passed applying specifically

to the business of mining. As was said by this court in Holden v. Hardy, supra, at p. 393-395:

> "In consequence of this, laws have been enacted in most of the States designed to meet these exigencies and to secure the safety of persons peculiarly exposed to these dangers. Within this general category are ordinances providing for fire-escapes for hotels, theatres, factories and other large buildings, a municipal inspection of boilers, and appliances designed to secure passengers upon railways and steamboats against the dangers necessarily incident to these methods of transportation. In States where manufacturing is carried on to a large extent, provision is made for the protection of dangerous machinery against accidental contact, for the cleanliness and ventilation of working-rooms, for the guarding of wellholes, stairways, elevator shafts and for the employment of sanitary appliances. In others, where mining is the principal industry, special provision is made for the shoring up of dangerous walls, for ventilation shafts, bore holes, escapement shafts, means of signalling the surface, for the supply of fresh air, and the elimination, as far as possible, of dangerous gases, for safe means of hoisting and lowering cages, for a limitation upon the number of persons permitted to enter a cage, that cages shall be covered, and that there shall be fences and gates around the top of shafts, besides other similar precautions. * * * These statutes have been repeatedly enforced by the courts of several States; their validity assumed, and,

> so far as we are informed, they have been uniformly held to be constitutional. * * * Upon the principles above stated, we think the act in question may be sustained as a valid exercise of the police power of the State. The enactment does not profess to limit hours of all workmen, but merely those who are employed in underground mines, or in the smelting, reduction or refinement of ores or metals. These employments, when too long pursued, the Legislature has judged to be detrimental to the health of the employes, and, so long as there was reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal Courts."

For the reasons stated by this court in Holden v. Hardy, supra, the protection and preservation of the health of coal miners is a proper subject for the exercise of the police power. The Legislature of the State of Indiana has determined the health of coal miners to be endangered by the nature of their work, and has deemed a washhouse as a beneficial agency to alleviate that condition. Unless this court can say that no such danger exists, or the Act is not calculated to accomplish the end intended, no Federal question is presented for review.

It is respectfully submitted that this case should be affirmed.

THOMAS M. HONAN,
Attorney-General,
Attorney for Defendant in Error.

THOMAS H. BRANAMAN,
Of Counsel.

# BOOTH *v.* STATE OF INDIANA.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 231. Argued April 19, 1915.—Decided May 3, 1915.

As the police power of the State extends to regulating coal mining, it cannot be limited by moments of time and differences of situation.

Where the highest court of the State has sustained a police statute under the State Constitution, this court is only concerned with questions of constitutionality under the Federal Constitution.

The Fifth Amendment is not applicable to the States.

The decision of the highest court of the state that the method of calling a police statute into operation is proper does not involve a Federal question reviewable by this court.

A police statute requiring owners of the mine to furnish certain conveniences for coal miners on request of a specified number of employés is not unconstitutional as denying equal protection of the law because it may be applied to one mine where some of the employés demand it, and not to another where such demand is not made by the specified number. *McLean* v. *Arkansas*, 211 U. S. 539.

The statute of Indiana requiring owners of coal mines to erect and maintain wash-houses for their employés at the request of twenty or more employés is not unconstitutional under the Fourteenth Amendment either as depriving the mine owners of their property without due process of law or as denying them the equal protection of the law.

100 N. E. Rep. 563, affirmed.

THE facts, which involve the constitutionality under the due process and equal protection provisions of the Fourteenth Amendment of the coal mine wash-house law of Indiana, are stated in the opinion.

*Mr. Henry W. Moore*, with whom *Mr. Ulric Z. Wiley* and *Mr. T. J. Moll* were on the brief, for plaintiff in error:

The act under which plaintiff in error was convicted is not a valid exercise of police power; it does not serve the purpose for which it was intended.

The act is not in harmony with the principles of popular government; it goes beyond what is necessary and violates the purpose of the Fourteenth Amendment.

The act deprives a citizen of property without compensation or due process of law; is class legislation and violates both state and Federal Constitutions; it discriminates between persons equally entitled to its protection.

The legislature cannot delegate its authority to another body or private person or persons, nor can it abdicate its functions except to lawful public agencies.

A police regulation cannot be established except by the law-making power.

The act is in the nature of a "referendum" and is therefore invalid. It is also an arbitrary exercise of police power as applied to plaintiff in error.

Numerous authorities support these contentions.

*Mr. Richard M. Milburn* and *Mr. Leslie R. Naftzer*, with whom *Mr. Thomas M. Honan*, Attorney-General for the

State of Indiana, and *Mr. Thomas H. Branaman*, were on the brief, for defendant in error.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Error to review a judgment of conviction for the violation of a statute of Indiana entitled "An act requiring the owners and operators of coal mines and other employers of labor to erect and maintain wash-houses at certain places where laborers are employed, for the protection of the health of the employés, and providing a penalty for its violation." Section one reads as follows:

"*Coal Mining—Wash-houses for Laborers.*

"Section 1. Be it enacted by the General Assembly of the State of Indiana, That for the protection of the health of the employés hereinafter mentioned, it shall be the duty of the owner, operator, lessee, superintendent of, or other person in charge of every coal mine or colliery, or other place where laborers employed are surrounded by or affected by similar conditions as employés in coal mines, at the request in writing of twenty (20) or more employés of such mine or place, or in event there are less than twenty (20) men employed, then upon the written request of one-third (1/3) of the number of employés employed, to provide a suitable wash-room or wash-house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe-keeping of clothing. Provided, however, that the owner, operator, lessee, super-

intendent of or other person in charge of such mine or place as aforesaid, shall not be required to furnish soap or towels."

It is provided in § 2 that a violation of the act shall be a misdemeanor and punished by a fine, to which may be added imprisonment.

The prosecution was started by an affidavit charging Booth, he being the superintendent of a mine belonging to the Indiana Coal Company in one of the counties of the State, with a violation of the act for failure to provide a wash-house or wash-room as required by the statute after request in writing from twenty of the employés of the mine.

A motion to quash the affidavit and dismiss the charge was made on the grounds, stated with elaborate specifications, that the affidavit did not state an offense against the State of Indiana or the United States and that the statute violated both the constitution of the State and the Constitution of the United States.

The motion having been overruled, upon trial Booth was found guilty and fined one dollar and costs. He made a motion in arrest of judgment, repeating without details the grounds that he had charged in his motion to dismiss. The conviction was affirmed by the Supreme Court of the State. (100 N. E. Rep. 563.)

The record contains seventeen assignments of error. Plaintiff in error, however, waives five of them and is content to present his contentions in the other twelve. These contentions are, stated in broad generality, that the statute under review is in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States and certain articles of the constitution of the State of Indiana.

We are concerned only with the contention based on the Fourteenth Amendment, as the Fifth Amendment is not applicable to the States and the conformity of the

statute to the constitution of the State of Indiana has been adjudged by the Supreme Court of the State.

The specifications under the Fourteenth Amendment are: (1) That the statute deprives plaintiff in error of his property without due process of law; and (2) denies him the equal protection of the law.

The Supreme Court rejected both contentions, deciding that the statute was a legal exercise of the police power of the State, and the specific objection that the statute was invalid because it only applies to coal mines and not to other classes of business the court said was disposed of by *Barbier* v. *Connolly*, 113 U. S. 27, and *Soon Hing* v. *Crowley*, 113 U. S. 703, 708. The court quoted from the latter case as follows: "The specific regulation for one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other business of a different kind."

Plaintiff in error, to sustain his contentions and to combat the conclusions of the Supreme Court, enters into a wide consideration of the police power. It has been so often discussed, that we may assume that both its extent and limitations are known. Their application in the present case can best be determined by considering the objections to it.

The first objection in the case at bar seems to be that the statute "applies solely and specifically to a particular class, engaged in a particular business, and is not in the interest of the public generally, as distinguished from a particular class." And it is further said that "it is a matter of common knowledge, of which courts take judicial notice, that the 'class' to which the act applies constitutes a very small percentage of population, and this being true, the act could not possibly be in the interest of the public health of the commonwealth."

The objection is answered by the cases already cited, by

*Holden* v. *Hardy*, 169 U. S. 366, and *McLean* v. *Arkansas*, 211 U. S. 539; and further comment is unnecessary.

But a distinction is sought to be made between what a legislature may require for the safety and protection of a miner while actually in service below ground and that which may be required when he has ceased or has not commenced his labors. Cases are cited which, upon that distinction, have decided that when a miner has ceased his work and has reached the surface of the earth his situation is not different from that of many other workmen and that, therefore, his rights are not greater than theirs and will not justify a separate classification.

We are unable to concur in this reasoning or to limit the power of the legislature by the distinctions expressed. Having the power in the interest of the public health to regulate the conditions upon which coal mining may be conducted, it cannot be limited by moments of time and differences of situation. The legislative judgment may be determined by all of the conditions and their influence. The conditions to which a miner passes or returns from are very different from those which an employé in work above ground passes to or returns from, and the conditions of actual service in the cases are very different, and it cannot be judicially said that a judgment which makes such differences a basis of classification is arbitrarily exercised, certainly not in view of the wide discretion this court has recognized, and necessarily has recognized, in legislation to classify its objects.

It is further said that the act "is inoperative in itself, for the reason that it can only be put into operation by the will and election of a specific number of the 'class' to which it applies, and consequently it fastens a burden upon the owners and operators of coal mines, which is 'a manifest injustice by positive law.'" The purpose of the comment, other than to give accent to the contention that the act has special operation, is part of the view elsewhere

urged that the provision is a delegation of legislative power. But with this objection we are not concerned. The Supreme Court of the State decided that the law could be called into operation by petition, and in the decision no Federal question is involved.

It is, however, further objected that the law discriminates because it may be applied to one mine and not to another, all other conditions being the same but the desire of the miners—indeed, discriminates upon a distinction more arbitrary than that, upon the desire of twenty in one mine as against a lesser number, nineteen, it may be, in another. The objection is a familiar one and has an instance and answer in *McLean* v. *Arkansas*, 211 U. S. 539. It is the usual ground of attack upon a distinction based on degree, and seems to have a special force when the distinction depends upon a difference in numbers.

But there are many practical analogies. The jurisdiction of a court is often made to depend upon amounts apparently arbitrarily fixed. For instance, the jurisdiction of the District Court of the United States (formerly the Circuit Court) is limited to civil suits in law and equity in certain instances in which the amount in controversy is $3,000. It could be objected, as it is here objected, that the amount is arbitrary and that there cannot be any difference in principle between suits for $3,000 and suits for $2,999, a distinction dependent upon one dollar. Indeed, in more acute illustration, the distinction may be made of one cent only. And so might there be objection to any amount which might be selected, as it might be also to any number of petitioning miners which the legislature of Indiana might have selected. Indeed, would not an objection have the same legal strength if the law had been made to depend upon anything less than unanimity of desire? To require that it might well have been thought by the legislature would render the legislation nugatory, and that a lesser number would call it into exercise and

attain its object. The conception, no doubt, was that a lesser number—indeed, the number selected—would be fairly representative of the desire and necessity of the miners and that use would breed a habit, example induce imitation and a healthful practice starting with a limited number might become that of all. And such consummation justified the effort, the manner adopted attaining the end sought as well as if not better than a direct and peremptory requirement of the miners and mine owners. The choice of manner was under the circumstances for the legislature and its choice was legal if it had the power to enact the law at all. Plaintiff in error disputes such power and thereby presents in its most general form his contention against the validity of the statute.

The contention seems to be independent of the objections that we have considered, and yet in counsels' discussion those objections and others are so mingled that it is impossible to discern which they consider especially vitiate the law and take it out of the power of government to enact.

The charge of its special application to coal mines and its other features of discrimination we have passed upon. The charge that it has no relation to health, we are not disposed to dwell upon. Counsel seem to think if the washing places were required to be put underground in connection with or in proximity to the working places, the law would be relieved from some criticism.

There remains to be considered only the contention that the law "is, within itself, a dead letter." And it is said that "it would forever lie dormant if not called into exercise and activity by the request of private persons." Or, as plaintiff in error otherwise expresses what he thinks to be the evil of the law, it "is not enforceable by any power which the state government possesses, under its constitution, or its laws enacted thereunder, but it is enforceable only upon the demand, the whim or the election

of a limited number of employés in the coal mining business." And it is declared that "this is the exercise of an arbitrary power, for an arbitrary private right, and against a private business."

We have quoted counsels' language in order to give them the strength of their own expressions of what they consider the vice of the law, but manifestly it is but a generalization from the particular objections which we have considered, and those objections we have sufficiently discussed.

*Judgment affirmed.*